

The Honorable Franklin D. Burgess

FILED ENTERED  
 LODGED RECEIVED

★ MAR 25 1997 ★

AT SEATTLE  
 CLERK U.S. DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 BY DEPUTY

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT TACOMA

STATE OF WASHINGTON; and  
 PACCAR, INC.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,  
 et al.,

Defendant.

No. C94-5326 FDB  
 No. C94-5518 FDB

CONSENT DECREE  
 BETWEEN THE UNITED  
 STATES AND PACCAR

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF WASHINGTON, and  
 PACCAR, INC.,

Defendants.

93220

USEPA SF



1058673

# TABLE OF CONTENTS

## Page

I.	BACKGROUND . . . . .	1
II.	JURISDICTION . . . . .	3
III.	PARTIES BOUND . . . . .	4
IV.	DEFINITIONS . . . . .	5
V.	GENERAL PROVISIONS . . . . .	10
	Objectives of the United States and PACCAR . . . . .	10
	Commitments by PACCAR and the United States . . . . .	11
	Compliance With Applicable Law . . . . .	12
	Permits . . . . .	13
VI.	PERFORMANCE OF THE WHOU REMEDIAL WORK BY PACCAR . . . . .	13
	Supervision of the WHOU Remedial Work . . . . .	13
	The WHOU Remedial Work . . . . .	14
	Modification of the WHOU Remedial Work Plan or Related WHOU Work Plans . . . . .	17
VII.	REMEDY REVIEW AND ADDITIONAL RESPONSE ACTIONS . . . . .	19
	Periodic Review . . . . .	19
VIII.	QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS . . . . .	20
IX.	ACCESS . . . . .	23
X.	REPORTING REQUIREMENTS . . . . .	25
XI.	EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS . . . . .	28
XII.	PROJECT COORDINATORS . . . . .	31

CONSENT DECREE BETWEEN THE UNITED STATES AND PACCAR - i

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1	XIII.	ASSURANCE OF ABILITY TO COMPLETE WHOU REMEDIAL WORK . . . . .	33
2			
3	XIV.	CERTIFICATION OF COMPLETION . . . . .	35
4		Completion of The WHOU Remedial Work . . . . .	35
5	XV.	EMERGENCY RESPONSE . . . . .	36
6	XVI.	PAYMENTS, INCLUDING THOSE TO PACCAR AND THE UNITED STATES, AND TO AND FROM THE SITE- SPECIFIC SUPERFUND ACCOUNT . . . . .	38
7			
8	XVII.	INSURANCE AND INDEMNIFICATION . . . . .	40
9	XVIII.	FORCE MAJEURE . . . . .	43
10	XIX.	DISPUTE RESOLUTION . . . . .	46
11	XX.	STIPULATED PENALTIES . . . . .	51
12	XXI.	COVENANT NOT TO SUE BY THE UNITED STATES . . . . .	56
13		United States' Pre-certification Reservations . . . . .	57
14		United States' Post-certification Reservations . . . . .	59
15		General reservations of rights . . . . .	61
16		WHOU Remedial Work Takeover . . . . .	62
17	XXII.	COVENANTS BY PACCAR . . . . .	63
18		Covenant Not to Sue . . . . .	63
19	XXIII.	EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION . . . . .	64
20			
21	XXIV.	ACCESS TO INFORMATION . . . . .	67
22	XXV.	RETENTION OF RECORDS . . . . .	69
23	XXVI.	NOTICES AND SUBMISSIONS . . . . .	70
24	XXVII.	EFFECTIVE DATE . . . . .	72

1	XXVIII.	RETENTION OF JURISDICTION . . . . .	72
2	XXIX.	APPENDICES . . . . .	72
3	XXX.	COMMUNITY RELATIONS . . . . .	73
4	XXXI.	MODIFICATION . . . . .	73
5	XXXII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT . . . . .	74
6	XXXIII.	SIGNATORIES/SERVICE . . . . .	74

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CONSENT DECREE BETWEEN THE  
UNITED STATES AND PACCAR - iii

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

I. BACKGROUND

A. On June 17, 1994, the State of Washington ("the State") and PACCAR Inc ("PACCAR") filed civil complaint No. C94-5326 against the United States of America ("United States") alleging liability under Sections 107 and 113 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613, and seeking declaratory relief and recovery of response costs incurred and to be incurred at the Wyckoff/Eagle Harbor Superfund Site at Bainbridge Island, Washington ("the Site").

B. On September 19, 1994, the United States, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed civil complaint No. C94-5518 against the State and PACCAR alleging liability under Section 107 of CERCLA, 42 U.S.C. § 9607, and seeking declaratory relief and recovery of response costs incurred and to be incurred at the Site.

C. The United States, in its complaint, seeks inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the West Harbor Operable Unit ("WHOU") and East Harbor Operable Unit ("EHOU") of the Site, together with accrued interest; and (2) performance of response actions by the State and PACCAR consistent with the National Contingency Plan, 40 C.F.R. Part 300, as amended, ("NCP").

CONSENT DECREE BETWEEN THE  
UNITED STATES AND PACCAR - 1

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 D. On January 11, 1995, the United States stipulated that  
2 it was not seeking costs incurred by EPA in conducting response  
3 actions at the Wyckoff Facility Operable Unit or the Wyckoff  
4 Groundwater Operable Unit of the Site.

5 E. On February 1, 1995, this Court consolidated civil  
6 action No. C94-5518 with civil action No. C94-5326.

7 F. PACCAR does not admit any liability to the United  
8 States arising out of the transactions or occurrences alleged in  
9 the United States' complaint, nor does PACCAR acknowledge that  
10 the release or threatened release of hazardous substances at or  
11 from the Site constitutes an imminent or substantial endangerment  
12 to the public health or welfare or the environment. The United  
13 States admits no liability to PACCAR arising out of the  
14 transactions or occurrences alleged in PACCAR's and the State's  
15 complaint.

16 G. The decision by EPA on the remedial action to be  
17 implemented at the WHOU is embodied in the Record of Decision and  
18 Amended Record of Decision for the WHOU, executed on September  
19 29, 1992, and December 8, 1995, respectively, (together referred  
20 to as "the WHOU ROD"), and at the EHOU is embodied in the Record  
21 of Decision for the EHOU, executed on September 29, 1994 ("the  
22 EHOU ROD").

23 H. Based on the presently available information, EPA has  
24 determined that the WHOU Remedial Work will be properly and

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 2

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

promptly conducted by PACCAR if undertaken in accordance with the requirements of this Consent Decree and its appendices.

I. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), if the WHOU Remedial Work and Additional Response Actions are undertaken in compliance with this Consent Decree, said work and actions shall constitute a response action taken or ordered by the President.

J. The United States and PACCAR recognize, and the Court by entering this Consent Decree finds, that this Consent Decree resolves the consolidated cases as between the United States and PACCAR, and has been negotiated in good faith, that implementation of this Consent Decree will expedite cleanup of the Site and will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over PACCAR. Solely for the purposes of this Consent Decree and the underlying complaints, PACCAR waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. PACCAR shall not challenge

CONSENT DECREE BETWEEN THE  
UNITED STATES AND PACCAR - 3

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 the terms of this Consent Decree or this Court's jurisdiction to  
2 enter and enforce this Consent Decree.

3 III. PARTIES BOUND

4 2. This Consent Decree applies to and is binding upon the  
5 United States and PACCAR, including all successors and assigns of  
6 PACCAR. Any change in ownership or corporate status of PACCAR,  
7 including, but not limited to, any transfer of assets or real or  
8 personal property, shall not alter PACCAR's responsibilities  
9 under this Consent Decree.

10 3. PACCAR shall provide a copy of this Consent Decree to  
11 each contractor hired to perform the WHOU Remedial Work as  
12 required by this Consent Decree, and to each person representing  
13 PACCAR with respect to the Site or the WHOU Remedial Work, and  
14 shall condition all contracts entered into to perform the WHOU  
15 Remedial Work in conformity with the terms of this Consent  
16 Decree. PACCAR or its contractors shall provide written notice  
17 of this Consent Decree to all subcontractors hired to perform any  
18 portion of the WHOU Remedial Work required by this Consent  
19 Decree. PACCAR shall nonetheless be responsible for ensuring  
20 that its contractors and subcontractors perform the WHOU Remedial  
21 Work in accordance with this Consent Decree. With regard to the  
22 activities undertaken pursuant to this Consent Decree, each  
23 contractor and subcontractor shall be deemed to be in a

24  
25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 4

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616



1 contractual relationship with PACCAR within the meaning of  
2 Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

3 IV. DEFINITIONS

4 4. Unless otherwise expressly provided herein, terms used  
5 in this Consent Decree which are defined in CERCLA or in  
6 regulations promulgated under CERCLA shall have the meaning  
7 assigned to them in CERCLA or in such regulations. Whenever  
8 terms listed below are used in this Consent Decree or in the  
9 appendices attached hereto and incorporated hereunder, the  
10 following definitions shall apply:

11 "Additional Response Actions" shall mean the contingency and  
12 supplemental work set forth in the OMMP and any additional work  
13 necessary to achieve the goals and objectives set forth in the  
14 WHOU ROD.

15 "CERCLA" shall mean the Comprehensive Environmental  
16 Response, Compensation, and Liability Act of 1980, as amended, 42  
17 U.S.C. §§ 9601 et seq.

18 "Consent Decree" shall mean this Consent Decree and all  
19 appendices attached hereto, as listed in Section XXIX  
20 (Appendices). In the event of conflict between this Consent  
21 Decree and any appendix, this Consent Decree shall control.

22 "Day" shall mean a calendar day unless expressly stated to  
23 be a working day. "Working day" shall mean a day other than a  
24 Saturday, Sunday, or Federal holiday. In computing any period of

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 5

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 time under this Consent Decree, where the last day would fall on  
2 a Saturday, Sunday, or Federal holiday, the period shall run  
3 until the close of business of the next working day.

4 "East Harbor Operable Unit" or "EHOU" shall mean the  
5 contaminated intertidal sediments and subtidal sediments in the  
6 eastern portions of Eagle Harbor, as defined in Section 5, page  
7 15, of the EHOU ROD, and as set forth in Figure 1 on page 9 of  
8 the EHOU ROD.

9 "EHOU ROD" shall mean the East Harbor Operable Unit Record  
10 of Decision, signed on September 29, 1994, and any amendments  
11 thereto.

12 "EPA" shall mean the United States Environmental Protection  
13 Agency and any successor departments or agencies of the United  
14 States.

15 "Habitat Mitigation" shall mean those habitat mitigation and  
16 enhancement actions necessary for the WHOU Remedial Action to  
17 comply with Section 404(b)(1) of the Clean Water Act, 33 U.S.C.  
18 § 1344(b)(1), including actions identified in the WHOU ROD and  
19 more fully defined in WHOU Remedial Design.

20 "Interest," shall mean interest at the rate specified for  
21 interest on investments of the Hazardous Substance Superfund  
22 established under Subchapter A of Chapter 98 of Title 26 of the  
23 U.S. Code, compounded on October 1 of each year, in accordance  
24 with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 6

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 "National Contingency Plan" or "NCP" shall mean the National  
2 Oil and Hazardous Substances Pollution Contingency Plan  
3 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,  
4 codified at 40 C.F.R. Part 300, and any amendments thereto.

5 "Operation and Maintenance" or "O&M" shall mean all  
6 activities required to maintain the effectiveness of the WHOU  
7 Remedial Work and the Habitat Mitigation as set forth in the  
8 Operation, Maintenance and Monitoring Plan ("OMMP").

9 "Operation, Maintenance and Monitoring Plan" or "OMMP" shall  
10 mean the plan to be approved, modified, amended, or developed by  
11 EPA for conducting O&M and Additional Response Actions for the  
12 WHOU. The OMMP shall be in a form similar to that portion of the  
13 WHOU Remedial Design which has been produced by PACCAR and is  
14 labeled "Operation, Maintenance and Monitoring Plan."

15 "Paragraph" shall mean a portion of this Consent Decree  
16 identified by an arabic numeral or an upper case letter.

17 "Performance Standards" shall mean the cleanup commitments  
18 applicable to the WHOU Remedial Work that will be performed and  
19 achieved by PACCAR, and that are set forth in Section 10 of the  
20 Record of Decision for the WHOU signed by EPA in September 1992,  
21 the Decision Summary in the Amended Record of Decision for the  
22 WHOU signed by EPA in December 1995, and the WHOU Remedial  
23 Design. These cleanup commitments are summarized as follows: (a)  
24 excavation, and proper disposal, of sediments from the WHOU which

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 7

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 contain mercury at levels greater than or equal to 5 mg/kg; (b)  
2 placement of a clean sediment cap, at least one meter thick, over  
3 all areas in the WHOU where the concentration of mercury in  
4 sediments is greater than 2.1 mg/kg; (c) placement of a thin  
5 layer of clean sediments over those areas which contain less than  
6 2.1 mg/kg of mercury but which fail to comply with the MCUL; and  
7 (d) stabilization and capping of upland soils which exceed the  
8 action levels set forth in Table 1 of the Amended Record of  
9 Decision for the WHOU.

10 "Plaintiff" shall mean the United States of America.

11 "Remedial Action " shall mean the remedial action for the  
12 WHOU set forth in the WHOU ROD, and includes WHOU Remedial Work,  
13 Habitat Mitigation, O&M; and Additional Response Actions.

14 "Response Costs" shall mean costs incurred by the United  
15 States in response to releases of hazardous substances at the  
16 Site.

17 "Section" shall mean a portion of this Consent Decree  
18 identified by a Roman numeral.

19 "Settling Federal Agencies" shall mean the United States  
20 Navy, the United States Army, the United States Coast Guard &  
21 Geodetic Survey, the United States Maritime Administration, and  
22 all other potentially liable federal agencies and  
23 instrumentalities.

24

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 8

27

28

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 "Site" shall mean the Wyckoff/Eagle Harbor Superfund Site,  
2 located at Bainbridge Island in Kitsap County, Washington.

3 "State of Washington" or "State" shall mean the State of  
4 Washington, which is acting through its Department of  
5 Transportation and National Resources, and all agents and assigns  
6 acting for or on behalf of the State.

7 "Supervising Contractor" shall mean the principal contractor  
8 retained by PACCAR to supervise and direct the implementation of  
9 the WHOU Remedial Work under this Consent Decree.

10 "United States" shall mean the United States of America,  
11 including all departments, agencies and instrumentalities  
12 thereof.

13 "Waste Material" shall mean (1) any "hazardous substance"  
14 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2)  
15 any pollutant or contaminant under Section 101(33) of CERCLA, 42  
16 U.S.C. § 9601(33).

17 "West Harbor Operable Unit" or "WHOU" shall mean the  
18 contaminated intertidal and subtidal sediments in the western  
19 portions of Eagle Harbor, as well as upland sources of  
20 contamination to these sediments, as set forth in the WHOU ROD.

21 "WHOU Remedial Work" shall mean those activities set forth  
22 in the WHOU Remedial Design, other than Habitat Mitigation, O&M,  
23 and Additional Response Actions, to be undertaken by PACCAR in  
24 compliance with the WHOU ROD and this Consent Decree, including

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 9

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 implementation according to all plans and submittals required by  
2 the WHOU Remedial Design and approved by EPA.

3 "WHOU Remedial Work Plan" shall mean the document developed  
4 pursuant to Paragraph 10 of this Consent Decree and approved by  
5 EPA, including any amendments thereto.

6 "WHOU Remedial Design" shall mean the Interim Technical  
7 Memorandum, Upland Source Evaluation dated April 14, 1995, the  
8 Design Submittal for the WHOU dated May 29, 1996, and any  
9 amendments thereto, and the Design Addendum, collectively  
10 attached hereto as Appendix B.

11 "WHOU ROD" shall mean the Record of Decision signed by EPA  
12 on September 29, 1992, and the Amended Record of Decision signed  
13 by EPA on December 8, 1995, for the West Harbor Operable Unit of  
14 the Site, and all attachments thereto. The WHOU ROD is attached  
15 as Appendix A.

16 "1997 WHOU Remedial Work" shall mean all WHOU Remedial Work  
17 except for sediment capping, uplands asphalt paving, soil  
18 stabilization of volumes in excess of those set forth in Table  
19 2-2 of the WHOU Remedial Design, and sediment dredging of volumes  
20 in excess of those set forth in Table 2-4 of the Remedial Design.

## 21 V. GENERAL PROVISIONS

22 5. Objectives of the United States and PACCAR. The  
23 objectives of the United States and PACCAR in entering into this  
24 Consent Decree are to protect public health and welfare and the

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 10

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 | environment at the Site by the implementation of response actions  
2 | in the WHOU by PACCAR, to reimburse costs of the United States,  
3 | to resolve all of the claims of the United States against PACCAR,  
4 | and to resolve all claims of PACCAR against all agencies of the  
5 | United States.

6 | 6. Commitments by PACCAR and the United States.

7 | a. Subject to the provisions of Subparagraph 6.c.  
8 | below, PACCAR shall finance and perform the WHOU Remedial Work  
9 | and achieve the Performance Standards in accordance with this  
10 | Consent Decree, the WHOU Remedial Design, and all other plans,  
11 | standards, specifications, and schedules required by the WHOU  
12 | Remedial Design and this Consent Decree and approved by EPA  
13 | pursuant to this Consent Decree.

14 | b. The United States, on behalf of the Settling  
15 | Federal Agencies, shall remit payments to the Wyckoff/Eagle  
16 | Harbor Superfund Site Special Accounts and to PACCAR as provided  
17 | in this Consent Decree. PACCAR shall remit payments to the  
18 | Wyckoff/Eagle Harbor Superfund Site Special Account for the WHOU  
19 | as specified in this Consent Decree. The United States and  
20 | PACCAR shall fund the cost of Additional Response Actions as  
21 | specified in Section VII (REMEDY REVIEW AND ADDITIONAL RESPONSE  
22 | ACTIONS)..

23 | c. If the cost of performing the WHOU Remedial Work,  
24 | Habitat Mitigation, and O&M is greater than \$4.7 million, within

25 | CONSENT DECREE BETWEEN THE  
26 | UNITED STATES AND PACCAR - 11

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 ninety (90) days of the date that the United States Department of  
2 Justice's Environmental Defense Section receives information  
3 documenting that the actual cost of the WHOU Remedial Work,  
4 Habitat Mitigation, and O&M has exceeded \$4.7 million, the United  
5 States, on behalf of the Settling Federal Agencies, shall pay an  
6 amount equal to 40% of the amount by which the actual cost of  
7 performing the WHOU Remedial Work is greater than \$4.7 million.  
8 In the event that the WHOU Remedial Work is performed in two  
9 separate calendar years, PACCAR may submit a request for payment  
10 to the United States at the conclusion of each year's WHOU  
11 Remedial Work, and the United States shall make a 40% payment to  
12 PACCAR within ninety days if the actual cost of the WHOU Remedial  
13 Work performed in that year is greater than the amount allocated  
14 to such WHOU Remedial Work in the WHOU Remedial Work \$4.7 million  
15 cost estimate.

16 7. Compliance With Applicable Law. All activities  
17 undertaken by PACCAR pursuant to this Consent Decree shall be  
18 performed in accordance with the requirements of all applicable  
19 federal and state laws and regulations, subject to Section 121(e)  
20 of CERCLA, 42 U.S.C. § 9621(e). PACCAR must also comply with all  
21 applicable or relevant and appropriate requirements of all  
22 Federal and state environmental laws as set forth in the WHOU ROD  
23 and the WHOU Remedial Design. The activities conducted pursuant  
24

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 12

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

28



1 to this Consent Decree, if approved by EPA, shall be considered  
2 to be consistent with the NCP.

3 8. Permits.

4 a. PACCAR may seek relief under the provisions of  
5 Section XVIII (FORCE MAJEURE) of this Consent Decree for any  
6 delay in the performance of the WHOU Remedial Work resulting from  
7 a failure to obtain, or a delay in obtaining, any permit required  
8 for the WHOU Remedial Work.

9 b. This Consent Decree is not, and shall not be  
10 construed to be, a permit issued pursuant to any federal or state  
11 statute or regulation.

12 VI. PERFORMANCE OF THE WHOU REMEDIAL WORK BY PACCAR

13 9. Supervision of the WHOU Remedial Work.

14 a. All aspects of the WHOU Remedial Work to be  
15 performed by PACCAR pursuant to this Section VI (PERFORMANCE OF  
16 THE WHOU REMEDIAL WORK BY PACCAR), Section VIII (QUALITY  
17 ASSURANCE, SAMPLING AND DATA ANALYSIS), and Section XV (EMERGENCY  
18 RESPONSE) of this Consent Decree shall be under the direction and  
19 supervision of de maximis, inc., who shall be the Supervising  
20 Contractor. If at any time thereafter, PACCAR proposes to change  
21 the Supervising Contractor, PACCAR shall give such notice to EPA  
22 and must obtain an authorization to proceed from EPA before the  
23 new Supervising Contractor performs, directs, or supervises any  
24 Remedial Action for the WHOU under this Consent Decree.

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 13

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1           b.    If EPA disapproves a proposed Supervising  
2 Contractor, EPA will notify PACCAR in writing. PACCAR shall  
3 submit to EPA a list of contractors, including the qualifications  
4 of each contractor, that would be acceptable to PACCAR within  
5 ten (10) days of receipt of EPA's disapproval of the contractor  
6 previously proposed. EPA will provide written notice of the  
7 names of any contractor(s) that it disapproves and an  
8 authorization to proceed with respect to any of the other  
9 contractors. PACCAR may select any contractor from that list  
10 that is not disapproved and shall notify EPA of the name of the  
11 contractor selected within two (2) days of EPA's authorization to  
12 proceed.

13           c.    If EPA fails to provide written notice of its  
14 authorization to proceed or disapproval as provided in this  
15 Paragraph 9 and this failure prevents PACCAR from meeting one or  
16 more deadlines in a plan approved by EPA pursuant to this Consent  
17 Decree, PACCAR may seek relief under the provisions of Section  
18 XVIII (FORCE MAJEURE).

19       10. The WHOU Remedial Work.

20           a.    Within forty-five (45) days after the date of  
21 signature on this Consent Decree by the Assistant Attorney  
22 General for the United States, the Supervising Contractor  
23 selected by PACCAR shall submit to EPA a work plan for the  
24 performance of the WHOU Remedial Work ("WHOU Remedial Work

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 14

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 Plan"). The WHOU Remedial Work Plan shall provide for  
2 construction and implementation of the WHOU Remedial Work, and  
3 shall provide for achievement of the Performance Standards in  
4 accordance with this Consent Decree and the WHOU Remedial Design.  
5 Upon its approval by EPA, the WHOU Remedial Work Plan shall be  
6 incorporated into and become enforceable under this Consent  
7 Decree.

8           b. The WHOU Remedial Work Plan shall include the  
9 Supervising Contractor's (i) Health and Safety Plan for field  
10 activities required by the WHOU Remedial Action Work Plan which  
11 conforms to the applicable Occupational Safety and Health  
12 Administration and EPA requirements including, but not limited  
13 to, 29 C.F.R. § 1910.120; (ii) the schedule for completion of the  
14 WHOU Remedial Work; (iii) the schedule for developing and  
15 submitting other required plans for the WHOU Remedial Work;  
16 (iv) the WHOU Quality Assurance Project Plan ("QAPP"); (v) the  
17 Environmental Protection Plan; (vi) the preliminary Source  
18 Control, Dredging and Disposal Plan; (vii) the preliminary Import  
19 Materials - Borrow Source Characterization Report; (viii)  
20 tentative formulation of the WHOU Remedial Work Team; and  
21 (ix) Construction Quality Control Plans. The Supervising  
22 Contractor is to submit the Source Control, Dredging and Disposal  
23 Plan and the Import Materials -Borrow Source Characterization  
24

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 15

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 Report as a WHOU Remedial Work Plan Addendum following initial  
2 site mobilization activities.

3 c. Upon approval of the WHOU Remedial Work Plan by  
4 EPA, PACCAR shall implement the activities consistent with the  
5 schedule provided in the WHOU Remedial Work Plan, and shall  
6 complete the field work portion of the 1997 WHOU Remedial Work by  
7 no later than December 31, 1997. Provided, however, that PACCAR  
8 shall not have the obligation to commence and complete the 1997  
9 WHOU Remedial Work in 1997 if: (i) EPA fails, without good cause,  
10 to approve the WHOU Remedial Work Plan by May 1, 1997, or within  
11 fourteen (14) days of the date EPA receives the WHOU Remedial  
12 Work Plan, whichever is later; or (2) this Consent Decree is not  
13 entered by the Court on or before May 1, 1997. In the event that  
14 PACCAR is not required to commence and complete the 1997 WHOU  
15 Remedial Work in 1997 for any of the foregoing reasons, PACCAR  
16 shall complete all WHOU Remedial Work by no later than  
17 December 31, 1998. PACCAR shall submit to EPA all plans,  
18 submittals, or other deliverables required under the approved  
19 WHOU Remedial Work Plan in accordance with the approved schedule  
20 for review and approval pursuant to Section XI (EPA APPROVAL OF  
21 PLANS AND OTHER SUBMISSIONS). Unless otherwise directed by EPA,  
22 PACCAR shall not commence physical WHOU Remedial Work activities  
23 at the Site prior to approval by EPA of the portions of the WHOU  
24

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 16

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

28

1 Remedial Work Plan applicable to such physical WHOU Remedial Work  
2 activities.

3 11. PACCAR shall continue to implement the WHOU Remedial  
4 Work Plan until the Performance Standards, and the plans,  
5 standards and specifications set forth in the WHOU Remedial  
6 Design are achieved and for so long thereafter as is otherwise  
7 required under this Consent Decree.

8 12. Modification of the WHOU Remedial Work Plan or Related  
9 WHOU Work Plans.

10 a. If the United States and PACCAR determine that  
11 modification to the WHOU Remedial Work and/or work plans  
12 developed pursuant to the WHOU Remedial Design is necessary to  
13 achieve the Performance Standards, the United States and PACCAR  
14 may agree that such modification be incorporated in the WHOU  
15 Remedial Work Plan.

16 b. PACCAR shall implement any work required by any  
17 modifications incorporated in the WHOU Remedial Work Plan and/or  
18 in work plans developed pursuant to the WHOU Remedial Design in  
19 accordance with this Section.

20 c. Nothing in this Section shall be construed to  
21 limit EPA's authority to require the performance of Additional  
22 Response Actions as otherwise provided in this Consent Decree.

23 13. PACCAR acknowledges and agrees that nothing in this  
24 Consent Decree, the WHOU Remedial Work Plan, or the WHOU Remedial

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 17

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

27  
28

1 Design constitutes a warranty or representation of any kind by  
2 the United States that compliance with the work requirements set  
3 forth in the WHOOU Remedial Work Plan and the WHOOU Remedial Design  
4 will achieve the Performance Standards.

5 14. PACCAR shall, prior to any shipment of Waste Material  
6 from the Site to an out-of-state waste management facility,  
7 provide written notification to the appropriate state  
8 environmental official in the receiving facility's state and to  
9 the EPA Project Coordinator of such shipment of Waste Material.  
10 However, this notification requirement shall not apply to any  
11 shipments when the total volume of all such shipments will not  
12 exceed 10 cubic yards.

13 15. PACCAR shall include in the written notification  
14 required by Paragraph 14 above the following information, where  
15 available: (a) the name and location of the facility to which the  
16 Waste Material is to be shipped; (b) the type and quantity of the  
17 Waste Material to be shipped; (c) the expected schedule for the  
18 shipment of the Waste Material; and (d) the method of  
19 transportation. PACCAR shall notify the state in which the  
20 planned receiving facility is located of major changes in the  
21 shipment plan, such as a decision to ship the Waste Material to  
22 another facility within the same state, or to a facility in  
23 another state.

24

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 18

27

28

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 16. The identity of the receiving facility and state under  
2 Paragraphs 14 and 15 above will be determined by PACCAR following  
3 the award of the contract for WHOU Remedial Work construction.  
4 PACCAR shall provide the information required by Paragraph 15 as  
5 soon as practicable after the award of the contract and before  
6 the Waste Material is actually shipped.

7 VII. REMEDY REVIEW AND ADDITIONAL RESPONSE ACTIONS

8 17. Periodic Review. EPA will conduct reviews of whether  
9 the Remedial Action for the WHOU is protective of human health  
10 and the environment at least every five (5) years as required by  
11 Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable  
12 regulations.

13 18. If Additional Response Actions are required for the  
14 WHOU, and such Additional Response Actions are undertaken by the  
15 State, PACCAR shall fund 45% of the cost to implement such  
16 Additional Response Actions, and the United States, on behalf of  
17 the Settling Federal Agencies, shall fund 40% of the cost to  
18 implement such Additional Response Actions. PACCAR waives any  
19 rights to dispute resolution under this Consent Decree with  
20 respect to its obligations under this Paragraph; provided,  
21 however, that those obligations are subject to the right of the  
22 State to invoke dispute resolution with respect to Additional  
23 Response Actions.

24  
25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 19

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 19. If Additional Response Actions are required for the  
2 WHOU, and such Additional Response Actions are undertaken by EPA,  
3 PACCAR shall reimburse EPA for 45% of the costs incurred to  
4 perform such Additional Response Actions, and the United States,  
5 on behalf of the Settling Federal Agencies, shall reimburse EPA  
6 for 40% of the costs incurred to perform such Additional Response  
7 Actions. If EPA undertakes Additional Response Actions, PACCAR  
8 shall reimburse EPA for 45% of the costs incurred not  
9 inconsistent with the NCP, subject only to PACCAR's right to  
10 dispute the amount of such costs under Section XIX (DISPUTE  
11 RESOLUTION) of this Consent Decree.

12 20. If PACCAR fails to implement the WHOU Remedial Design  
13 in accordance with this Consent Decree, any work required as a  
14 result of or arising out of such a failure shall not be deemed  
15 Additional Response Actions for the purpose of reimbursement  
16 under this Section.

17 VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

18 21. PACCAR shall use quality assurance, quality control,  
19 and chain of custody procedures for all samples in accordance  
20 with "EPA Requirements for Quality Assurance Project Plans for  
21 Environmental Data Operation," (EPA QA/R5; "Preparing Perfect  
22 Project Plans," (EPA /600/9-88/087), and subsequent amendments to  
23 such guidelines upon notification by EPA to PACCAR of such  
24 amendment. Amended guidelines shall apply only to procedures

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 20

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616



1 conducted after such notification. PACCAR shall not perform any  
2 monitoring except in accordance with the requirements of the a  
3 WHOU Quality Assurance Project Plan ("QAPP") that has been  
4 approved by EPA, as part of the WHOU Remedial Work Plan. If  
5 relevant to the proceeding, the United States and PACCAR agree  
6 that validated sampling data generated in accordance with the  
7 QAPP and reviewed and approved by EPA shall be admissible as  
8 evidence, without objection, in any proceeding under this Consent  
9 Decree. PACCAR shall ensure that EPA personnel and its  
10 authorized representatives are allowed access at reasonable times  
11 to all laboratories utilized by PACCAR in implementing this  
12 Consent Decree. In addition, PACCAR shall ensure that such  
13 laboratories analyze all samples submitted by EPA pursuant to the  
14 WHOU QAPP for quality assurance monitoring. PACCAR shall ensure  
15 that the laboratories it utilizes for the analysis of samples  
16 taken pursuant to this Consent Decree perform all analyses  
17 according to accepted EPA methods. Accepted EPA methods consist  
18 of those methods which are documented in the "Contract Lab  
19 Program Statement of Work for Inorganic Analysis" and the  
20 "Contract Lab Program Statement of Work for Organic Analysis,"  
21 dated February 1988, and any amendments made thereto during the  
22 course of the implementation of this Consent Decree. PACCAR  
23 shall ensure that all laboratories it uses for analysis of  
24 samples taken pursuant to this Consent Decree participate in an

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 21

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 EPA or EPA-equivalent QA/QC program. PACCAR shall ensure that  
2 all field methodologies utilized in collecting samples for  
3 subsequent analysis pursuant to this Consent Decree will be  
4 conducted in accordance with the procedures set forth in the WHOU  
5 QAPP approved by EPA.

6 22. Upon request, PACCAR shall allow split or duplicate  
7 samples to be taken by EPA or its authorized representatives.  
8 PACCAR shall notify EPA not less than 5 days in advance of any  
9 sample collection activity unless shorter notice is agreed to by  
10 EPA. In addition, EPA shall have the right to take any  
11 additional samples that EPA deems necessary. Upon request, EPA  
12 shall allow PACCAR to take split or duplicate samples of any  
13 samples they take as part of the United States' oversight of  
14 PACCAR's implementation of the WHOU Remedial Work, and EPA shall  
15 notify PACCAR not less than five (5) days in advance of sample  
16 collection activity, unless PACCAR agrees to a shorter notice  
17 period, or EPA determines that a shorter notice period is  
18 necessary to protect human health or the environment.

19 23. PACCAR shall submit to EPA two copies of the results  
20 of all sampling and/or tests or other data obtained or generated  
21 by or on behalf of PACCAR with respect to the WHOU and/or the  
22 implementation of this Consent Decree unless EPA agrees  
23 otherwise. Upon request, EPA shall submit to PACCAR one copy of  
24 the results of all sampling and/or tests or other data obtained

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 22

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

28

1 or generated by or on behalf of EPA with respect to the WHOU  
2 and/or implementation of this Consent Decree.

3 24. Notwithstanding any provision of this Consent Decree,  
4 the United States hereby retains all of its information gathering  
5 and inspection authorities and rights, including enforcement  
6 actions related thereto, under CERCLA, RCRA, and any other  
7 applicable statutes or regulations.

8 IX. ACCESS

9 25. Commencing upon the date of lodging of this Consent  
10 Decree, PACCAR shall arrange for access to the Site and all other  
11 property to which access is required for the implementation of  
12 this Consent Decree, for the United States and its  
13 representatives, including EPA and its contractors, at all  
14 reasonable times, for the purpose of conducting any activity  
15 related to this Consent Decree including, but not limited to:

- 16 a. Monitoring the WHOU Remedial Work;  
17 b. Verifying any data or information submitted to the  
18 United States;  
19 c. Conducting investigations relating to  
20 contamination at or near the Site;  
21 d. Obtaining samples;  
22 e. Assessing the need for, planning, or implementing  
23 additional response actions at or near the Site;

24

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 23

27 U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
28 (206) 526-6616

1 f. Inspecting and copying records, operating logs,  
2 contracts, or other documents maintained or generated by PACCAR  
3 or its agents, consistent with Section XXIII; and

4 g. Assessing PACCAR's compliance with this Consent  
5 Decree.

6 EPA will give one (1) working day notice to PACCAR in advance  
7 when access is needed.

8 26. To the extent that the Site or any other property to  
9 which access is required for the implementation of this Consent  
10 Decree is owned or controlled by persons other than PACCAR,  
11 PACCAR shall use best efforts to secure from such persons access  
12 for PACCAR and the United States and its representatives,  
13 including, but not limited to, EPA and its contractors, as  
14 necessary to effectuate this Consent Decree. For purposes of  
15 this Paragraph, "best efforts" does not include the payment of  
16 money or other forms of compensation in consideration of access.  
17 If any access required to complete the WHOI Remedial Work is not  
18 obtained within 30 days of the date of lodging of this Consent  
19 Decree, or within 30 days of the date EPA notifies PACCAR in  
20 writing that additional access beyond that previously secured is  
21 necessary, PACCAR shall promptly notify the United States in  
22 writing, and shall include in that notification a summary of the  
23 steps PACCAR has taken to attempt to obtain access. In the event  
24 that PACCAR is unable to gain access to property to which access

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 24

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 is required for implementation of this Consent Decree, PACCAR  
2 shall apply to this Court to obtain such access. The United  
3 States may, as it deems appropriate, assist PACCAR in obtaining  
4 access. Any costs of obtaining access, other than legal fees,  
5 shall be included as a cost of the WHOU Remedial Work and paid  
6 pursuant to this Consent Decree.

7 27. Notwithstanding any provision of this Consent Decree,  
8 the United States retains all of its access authorities and  
9 rights, including enforcement authorities related thereto, under  
10 CERCLA, RCRA, and any other applicable statute or regulations.

11 X. REPORTING REQUIREMENTS

12 28. In addition to any other requirement of this Consent  
13 Decree, PACCAR shall submit to EPA two (2) copies of written  
14 monthly progress reports that: (a) describe the actions which  
15 have been taken toward achieving compliance with this Consent  
16 Decree during the previous month; (b) include a summary of all  
17 results of sampling and tests and all other data received or  
18 generated by PACCAR or its contractors or agents in the previous  
19 month; (c) identify all work plans, plans and other deliverables  
20 required by this Consent Decree completed and submitted during  
21 the previous month; (d) describe all actions, including, but not  
22 limited to, data collection and implementation of work plans,  
23 which are scheduled for the next month and provide other  
24 information relating to the progress of construction, including,

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 25

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 but not limited to, graphical representations, such as critical  
2 path diagrams; (e) include information regarding percentage of  
3 completion, unresolved delays encountered or anticipated that may  
4 affect the future schedule for implementation of the WHOU  
5 Remedial Work, and a description of efforts made to mitigate  
6 those delays or anticipated delays; (f) include any modifications  
7 to the work plans or other schedules that PACCAR has proposed to  
8 EPA or that have been approved by EPA; and (g) describe all  
9 activities undertaken in support of the Community Relations Plan  
10 during the previous month and those to be undertaken in the next  
11 month. PACCAR shall submit these progress reports to EPA by the  
12 tenth day of every month following the lodging of this Consent  
13 Decree until EPA notifies PACCAR pursuant to Paragraph 46 of  
14 Section XIV (CERTIFICATION OF COMPLETION). If requested by EPA,  
15 PACCAR shall also provide briefings for EPA to discuss the  
16 progress of the WHOU Remedial Work.

17 29. PACCAR shall notify EPA of any change in the schedule  
18 described in a monthly progress report for the performance of any  
19 activity, including, but not limited to, data collection and  
20 implementation of work plans, no later than seven (7) days prior  
21 to the performance of the activity, unless earlier performance of  
22 the activity is necessary for proper and timely performance of  
23 the WHOU Remedial Work, in which case PACCAR shall give EPA at  
24 least two (2) days notice of the change in the schedule.

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 26

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1        30. Upon the occurrence of any event during performance of  
2 the WHOI Remedial Work that PACCAR is required to report pursuant  
3 to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the  
4 Emergency Planning and Community Right-to-know Act (EPCRA), 42  
5 U.S.C. § 11004, PACCAR shall, within 24 hours of the onset of  
6 such event, orally notify the EPA Project Coordinator or the  
7 Alternate EPA Project Coordinator (in the event of the  
8 unavailability of the EPA Project Coordinator), or, in the event  
9 that neither the EPA Project Coordinator or Alternate EPA Project  
10 Coordinator is available, the Emergency Response Section, Region  
11 10, United States Environmental Protection Agency. These  
12 reporting requirements are in addition to the reporting required  
13 by CERCLA or EPCRA.

14        31. Within 20 days of the onset of an event as described  
15 in Paragraph 30, PACCAR shall furnish to the United States a  
16 written report, signed by PACCAR's Project Coordinator, setting  
17 forth the events which occurred and the measures taken, and to be  
18 taken, in response thereto. Within 30 days of the conclusion of  
19 such an event, PACCAR shall submit a report setting forth all  
20 actions taken in response thereto.

21        32. PACCAR shall submit four (4) copies to EPA of all  
22 plans, reports, and data required by this Consent Decree.

23        33. All reports and other documents submitted by PACCAR to  
24 EPA (other than the monthly progress reports referred to above)

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 27

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 which purport to document PACCAR's compliance with the terms of  
2 this Consent Decree shall be signed by an authorized  
3 representative of PACCAR.

4 XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

5 34. a. After review of any plan, report or other item  
6 which is required to be submitted for approval pursuant to this  
7 Consent Decree, EPA shall: (i) approve, in whole or in part, the  
8 submission; (ii) approve the submission upon specified conditions  
9 and provide a written justification for the specified conditions;  
10 (iii) modify the submission to cure the deficiencies; (iv)  
11 disapprove, in whole or in part, the submission, directing that  
12 PACCAR modify the submission and provide a written justification;  
13 or (v) any combination of the above. However, EPA shall not  
14 modify a submission without first providing PACCAR at least one  
15 notice of deficiency and an opportunity to cure within ten (10)  
16 days, except where to do so would cause serious disruption to the  
17 WHOU Remedial Work, or where previous submission(s) have been  
18 disapproved due to material defects and the deficiencies in the  
19 submission under consideration indicate a bad faith lack of  
20 effort to submit an acceptable deliverable.

21 b. The United States and PACCAR acknowledge that  
22 PACCAR's ability to commence and complete the Appendix D WHOU  
23 Remedial Work activities in 1997 requires that EPA use its good  
24



1 faith efforts to review and comment on the WHOU Remedial Work  
2 Plan and other plans and submissions on an expedited basis.

3 35. In the event of approval, approval upon conditions, or  
4 modification by EPA, pursuant to this Section, PACCAR shall  
5 proceed to take any action required by the plan, report, or other  
6 item, as approved or modified by EPA subject only to its right to  
7 invoke dispute resolution procedures as set forth in Section XIX  
8 (DISPUTE RESOLUTION) with respect to the modifications or  
9 conditions made by EPA. In the event that EPA modifies the  
10 submission to cure the deficiencies pursuant to this Section and  
11 the submission has a material defect, EPA retains its right to  
12 seek stipulated penalties to the extent provided in Section XX  
13 (STIPULATED PENALTIES).

14 36.a. Upon receipt of a notice of disapproval pursuant to  
15 this Section, PACCAR shall, within 14 days or such longer time as  
16 specified by EPA in such notice, correct the deficiencies and  
17 resubmit the plan, report, or other item for approval. Any  
18 stipulated penalties applicable to a delay caused by the  
19 submission, as provided in Section XX (STIPULATED PENALTIES),  
20 shall accrue during the 14-day period or otherwise specified  
21 period but shall not be payable unless the resubmission is  
22 disapproved or modified due to a material defect as provided in  
23 this Section.

24  
25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 29

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1           b. Notwithstanding the receipt of a notice of  
2 disapproval pursuant to this Section, PACCAR shall proceed, at  
3 the direction of EPA, to take any action required by any non-  
4 deficient portion of the submission. Implementation of any non-  
5 deficient portion of a submission shall not relieve PACCAR of any  
6 liability for stipulated penalties, if applicable, under Section  
7 XX (STIPULATED PENALTIES).

8           37. In the event that a resubmitted plan, report or other  
9 item, or portion thereof, is disapproved by EPA, EPA may again  
10 require PACCAR to correct the deficiencies, in accordance with  
11 this Section. EPA also retains the right to modify or develop  
12 the plan, report or other item. PACCAR shall implement any such  
13 plan, report, or item as modified or developed by EPA, subject  
14 only to the right to invoke the dispute resolution procedures set  
15 forth in Section XIX (DISPUTE RESOLUTION).

16           38. If upon resubmission, a plan, report, or item is  
17 disapproved or modified by EPA due to a material defect, PACCAR  
18 shall be deemed to have failed to submit such plan, report, or  
19 item timely and adequately unless it invokes the dispute  
20 resolution procedures set forth in Section XIX (DISPUTE  
21 RESOLUTION) and EPA's action is overturned pursuant to that  
22 Section. The provisions of Section XIX (DISPUTE RESOLUTION) and  
23 Section XX (STIPULATED PENALTIES) shall govern the implementation  
24 of the WHOU Remedial Work and accrual and payment of any

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 30

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 stipulated penalties during any dispute resolution period. If  
2 EPA's disapproval or modification is upheld, stipulated penalties  
3 shall accrue, if applicable, for such violation from the date on  
4 which the initial submission was originally required, as provided  
5 in Section XX (STIPULATED PENALTIES).

6 39. All plans, reports, and other items required to be  
7 submitted to EPA under this Consent Decree shall, upon approval  
8 or modification by EPA, be enforceable under this Consent Decree.  
9 In the event EPA approves or modifies a portion of a plan,  
10 report, or other item required to be submitted to EPA under this  
11 Consent Decree, the approved or modified portion shall be  
12 enforceable under this Consent Decree.

13 XII. PROJECT COORDINATORS

14 40. Within 20 days of lodging this Consent Decree, PACCAR  
15 and EPA will notify each other, in writing, of the name, address  
16 and telephone number of their respective designated Project  
17 Coordinators and Alternate Project Coordinators. PACCAR's  
18 Project Coordinator and Alternate Project Coordinator may be  
19 persons employed by the Supervising Contractor. If a Project  
20 Coordinator or Alternate Project Coordinator initially designated  
21 is changed, the identity of the successor will be given to the  
22 other Party at least (five) 5 working days before the changes  
23 occur, unless impracticable, but in no event later than the  
24 actual day the change is made. PACCAR's Project Coordinator

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 31

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 shall be subject to disapproval by EPA and shall have the  
2 technical expertise sufficient to adequately oversee all aspects  
3 of the Remedial Action for the WHOU. PACCAR's Project  
4 Coordinator shall not be an attorney; nevertheless, he or she may  
5 assign other representatives, including other contractors, to  
6 serve as a Site representative for oversight of performance of  
7 daily operations during remedial activities.

8 41. The United States may designate other representatives,  
9 including, but not limited to, EPA employees, and federal  
10 contractors and consultants, to observe and monitor the progress  
11 of any activity undertaken pursuant to this Consent Decree.  
12 EPA's Project Coordinator and Alternate Project Coordinator shall  
13 have the authority lawfully vested in a Remedial Project Manager  
14 ("RPM") and an On-Scene Coordinator ("OSC") by the NCP. In  
15 addition, EPA's Project Coordinator or Alternate Project  
16 Coordinator shall have authority, consistent with the NCP, to  
17 halt any Remedial Action required by this Consent Decree and to  
18 take any necessary response action when s/he determines that  
19 conditions at the Site constitute an emergency situation or may  
20 present an immediate threat to public health or welfare or the  
21 environment due to release or threatened release of Waste  
22 Material. In the event that EPA issues an order to halt any  
23 Remedial Action required by this Consent Decree, either Party may  
24 request that this Court enforce, modify or vacate the order by

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 32

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 giving written notice to the other Party and filing an  
2 appropriate motion with this Court. In such case, in order to  
3 avoid delay of the WHOU Remedial Action, the Parties will seek an  
4 expedited hearing on the motion for enforcement, modification or  
5 vacation of the order.

6 XIII. ASSURANCE OF ABILITY TO COMPLETE WHOU REMEDIAL WORK

7 42. Within 30 days of entry of this Consent Decree, PACCAR  
8 shall establish and maintain financial security in the amount of  
9 \$4,700,000.00 in one or more of the following forms:

10 a. A surety bond guaranteeing performance of the WHOU  
11 Remedial Work;

12 b. One or more irrevocable letters of credit  
13 equalling the total estimated cost of the WHOU Remedial Work;

14 c. A trust fund;

15 d. A guarantee to perform the WHOU Remedial Work by  
16 one or more unrelated corporations that have a substantial  
17 business relationship with PACCAR; or

18 e. A demonstration that PACCAR satisfies the  
19 requirements of 40 C.F.R. Part 264.143(f).

20 43. If PACCAR seeks to demonstrate its ability to complete  
21 the WHOU Remedial Work through a guarantee by a third party  
22 pursuant to Paragraph 42.d. above, PACCAR shall demonstrate that  
23 the guarantor satisfies the requirements of 40 C.F.R. Part  
24 264.143(f). In the event that EPA determines at any time that

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 33

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 the financial assurances provided pursuant to this Section are  
2 inadequate, PACCAR shall, within 30 days of receipt of notice of  
3 EPA's determination, obtain and present to EPA for approval one  
4 of the other forms of financial assurance listed in Paragraph 42  
5 above. PACCAR's inability to demonstrate financial ability to  
6 complete the WHOOU Remedial Work shall not excuse performance of  
7 any activities required under this Consent Decree.

8 44. If PACCAR can show that the estimated cost to complete  
9 the remaining WHOOU Remedial Work has diminished below the \$4.7  
10 million amount set forth in Paragraph 6.c. above after entry of  
11 this Consent Decree, PACCAR may, on any anniversary date of entry  
12 of this Consent Decree, or at any other time agreed to by the  
13 Parties, reduce the amount of the financial security provided  
14 under this Section to the estimated cost of the remaining work to  
15 be performed. PACCAR shall submit a proposal for such reduction  
16 to EPA, in accordance with the requirements of this Section, and  
17 may reduce the amount of the security upon approval by EPA. In  
18 the event of a dispute, PACCAR may reduce the amount of the  
19 security in accordance with the final administrative or judicial  
20 decision resolving the dispute.

21 45. PACCAR may change the form of financial assurance  
22 provided under this Section at any time, upon notice to and  
23 approval by EPA, provided that the new form of assurance meets  
24 the requirements of this Section. In the event of a dispute,

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 34

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 PACCAR may change the form of the financial assurance only in  
2 accordance with the final administrative or judicial decision  
3 resolving the dispute.

4 XIV. CERTIFICATION OF COMPLETION

5 46. Completion of the WHOU Remedial Work.

6 a. Within 90 days after PACCAR concludes that all  
7 phases of the WHOU Remedial Work have been fully performed,  
8 PACCAR shall schedule and conduct a pre-certification inspection  
9 with EPA. If, after the pre-certification inspection, PACCAR  
10 still believes that the WHOU Remedial Work has been fully  
11 performed, PACCAR shall submit a written WHOU Remedial Work  
12 Report, consistent with applicable EPA guidance, and signed by a  
13 registered professional engineer stating that the WHOU Remedial  
14 Work has been completed in full satisfaction of the requirements  
15 of this Consent Decree. The report shall contain the following  
16 statement, signed by PACCAR's Project Coordinator:

17 "To the best of my knowledge, after thorough  
18 investigation, I certify that the information  
19 contained in or accompanying this submission  
20 is true, accurate and complete. I am aware  
21 that there are significant penalties for  
submitting false information, including the  
possibility of fine and imprisonment for  
knowing violations."

22 If, after review of the written report, EPA determines that any  
23 portion of the WHOU Remedial Work has not been completed in  
24 accordance with this Consent Decree, EPA will notify PACCAR in

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 35

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 writing of the activities PACCAR must undertake pursuant to this  
2 Consent Decree to complete the WHOOU Remedial Work. Provided,  
3 however, that EPA may only require PACCAR to perform such  
4 activities pursuant to this Paragraph to the extent that such  
5 activities are set forth in the WHOOU Remedial Design, including  
6 any modification of the WHOOU Remedial Work made pursuant to  
7 Paragraph 12 hereof, and such activities are consistent with the  
8 scope of the Remedial Action selected and set forth in the WHOOU  
9 ROD. EPA will set forth in the notice a schedule for performance  
10 of such activities consistent with the Consent Decree and the  
11 WHOOU Remedial Design or require PACCAR to submit a schedule to  
12 EPA for approval pursuant to Section XI (EPA APPROVAL OF PLANS  
13 AND OTHER SUBMISSIONS). PACCAR shall perform all activities  
14 described in the notice in accordance with the specifications and  
15 schedules established therein, subject to the right to invoke the  
16 dispute resolution procedures set forth in Section XIX (DISPUTE  
17 RESOLUTION).

18 b. If EPA concludes, based on the initial or any  
19 subsequent request for Certification of Completion by PACCAR that  
20 the WHOOU Remedial Work has been performed in accordance with this  
21 Consent Decree, EPA will so notify PACCAR in writing.

22 XV. EMERGENCY RESPONSE

23 47. In the event of any action or occurrence during the  
24 performance of the WHOOU Remedial Work which causes or threatens a

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 36

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

28



1 release of Waste Material from the Site that constitutes an  
2 emergency situation or may present an immediate threat to public  
3 health or welfare or the environment, PACCAR shall immediately  
4 take all appropriate action to prevent, abate, or minimize such  
5 release or threat of release, and shall immediately notify the  
6 EPA's Project Coordinator, or, if the Project Coordinator is  
7 unavailable, EPA's Alternate Project Coordinator. If neither of  
8 these persons is available, PACCAR shall notify the EPA Emergency  
9 Response Unit, Region 10. PACCAR shall take such actions in  
10 consultation with EPA's Project Coordinator or other available  
11 authorized EPA officer and in accordance with all applicable  
12 provisions of the Health and Safety Plans, the Contingency Plans,  
13 and any other applicable plans or documents developed pursuant to  
14 the WHOU Remedial Design. In the event that PACCAR fails to take  
15 appropriate response action as required by this Section, and EPA  
16 takes such action instead, PACCAR shall reimburse EPA all costs  
17 of the response action not inconsistent with the NCP pursuant to  
18 the procedures contained in Section XVI (PAYMENTS, INCLUDING  
19 THOSE TO PACCAR, THE UNITED STATES, AND TO AND FROM THE SITE-  
20 SPECIFIC SUPERFUND ACCOUNT) subject to the right to invoke the  
21 dispute resolution procedures set forth in Section XIX (DISPUTE  
22 RESOLUTION).

23 48. Nothing in the preceding Paragraph or in this Consent  
24 Decree shall be deemed to limit any authority of the United

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 37

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 States to: a) take all appropriate action to protect human health  
2 and the environment or to prevent, abate, respond to, or minimize  
3 an actual or threatened release of Waste Material on, at, or from  
4 the Site; or b) direct or order such action, or seek an order  
5 from the Court, to protect human health and the environment or to  
6 prevent, abate, respond to, or minimize an actual or threatened  
7 release of Waste Material on, at, or from the Site, subject to  
8 Section XXI (COVENANT NOT TO SUE BY THE UNITED STATES).

9 XVI. PAYMENTS, INCLUDING THOSE TO PACCAR, THE UNITED  
10 STATES, AND TO AND FROM THE SITE-SPECIFIC SUPERFUND ACCOUNTS

11 49. Within 30 days of the entry of this Consent Decree,  
12 EPA shall establish Wyckoff/Eagle Harbor Superfund Site Special  
13 Accounts for the WHOU and EHOU within the EPA Hazardous Substance  
14 Superfund. The funds paid under this Consent Decree into the  
15 Wyckoff/Eagle Harbor Superfund Site Special Account for the EHOU  
16 shall be used to conduct or finance response activities at or in  
17 connection with the EHOU at the Site. Any balance remaining in  
18 the Wyckoff/Eagle Harbor Superfund Site Special Account for the  
19 EHOU after the completion of the Remedial Action for the EHOU  
20 shall be transferred by EPA to the EPA Hazardous Substance  
21 Superfund as reimbursement toward past response costs incurred by  
22 EPA for the EHOU at the Site. All funds paid under this Consent  
23 Decree into the Wyckoff/Eagle Harbor Superfund Site Special  
24 Account for the WHOU shall be used to reimburse EPA for costs

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 38

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 incurred in overseeing implementation of Remedial Action for the  
2 WHOU.

3 50.a. PACCAR shall, within thirty (30) days of entry of  
4 this Consent Decree, cause to be delivered to the Wyckoff/Eagle  
5 Harbor Superfund Site Special Account for the WHOU ONE HUNDRED  
6 THOUSAND DOLLARS (\$100,000), payable to the "United States  
7 Environmental Protection Agency", referencing EPA Region and  
8 Site/Spill ID #10-62 and DOJ case number 90-7-1-525b.

9 b. The United States, on behalf of the Settling Federal  
10 Agencies, shall, within a reasonable time after establishment of  
11 the accounts identified in Paragraph 49 above, cause to be  
12 delivered to the Wyckoff/Eagle Harbor Superfund Site Special  
13 Account for the EHOU FOUR MILLION EIGHT HUNDRED THOUSAND DOLLARS  
14 (\$4,800,000.00), and to the Wyckoff/Eagle Harbor Superfund Site  
15 Special Account for the WHOU ONE HUNDRED THOUSAND DOLLARS  
16 (\$100,000.00). These payments shall be to the "United States  
17 Environmental Protection Agency", referencing EPA Region and  
18 Site/Spill ID #10-62 and DOJ case number 90-7-1-525b. It is  
19 anticipated by the United States and PACCAR that the monies  
20 needed for the payment by the United States provided for in this  
21 Consent Decree shall be drawn from the Judgment Fund. Any  
22 requirement in this Consent Decree for the payment or obligation  
23 of such funds shall be subject to the availability of  
24 appropriated funds, and no provision herein shall be interpreted

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 39

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 to require obligation or payment of funds in violation of the  
2 Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, and 1511-1519,

3 XVII. INSURANCE AND INDEMNIFICATION

4 51.a. The United States does not assume any liability by  
5 entering into this Consent Decree or by virtue of any designation  
6 of PACCAR as EPA's authorized representative under Section 104(e)  
7 of CERCLA, 42 U.S.C. § 9604(e). PACCAR shall indemnify, save and  
8 hold harmless the United States and its officials, agents,  
9 employees, contractors, subcontractors, or representatives for or  
10 from any and all claims or causes of action arising from, or on  
11 account of, negligent or other wrongful acts or omissions of  
12 PACCAR, its officers, directors, employees, agents, contractors,  
13 subcontractors, and any persons acting on its behalf or under  
14 their control, in carrying out activities pursuant to this  
15 Consent Decree, including, but not limited to, any claims arising  
16 from any designation of PACCAR as EPA's authorized representative  
17 under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Further,  
18 PACCAR agrees to pay the United States all costs incurred by the  
19 United States including, but not limited to, attorneys fees and  
20 other expenses of litigation and settlement arising from, or on  
21 account of, claims made against the United States based on  
22 negligent or other wrongful acts or omissions of PACCAR, its  
23 officers, directors, employees, agents, contractors,  
24 subcontractors, and any persons acting on their behalf or under

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 40

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 their control, in carrying out activities pursuant to this  
2 Consent Decree. The United States shall not be held out as a  
3 party to any contract entered into by or on behalf of PACCAR in  
4 carrying out activities pursuant to this Consent Decree. Neither  
5 PACCAR nor any such contractor shall be considered an agent of  
6 the United States.

7         b. The United States shall give PACCAR notice of any  
8 claim for which the United States plans to seek indemnification  
9 pursuant to Paragraph 51.a., and shall consult with PACCAR prior  
10 to settling such claim.

11         52. PACCAR waives all claims against the United States for  
12 damages or reimbursement or for set-off of any payments made or  
13 to be made to the United States, arising from or on account of  
14 any contract, agreement, or arrangement between PACCAR and any  
15 person for performance of the WHOU Remedial Work, including, but  
16 not limited to, claims on account of construction delays. In  
17 addition, PACCAR shall indemnify and hold harmless the United  
18 States with respect to any and all claims for damages or  
19 reimbursement arising from or on account of any contract,  
20 agreement, or arrangement between PACCAR and any person for  
21 performance of the WHOU Remedial Work, including, but not limited  
22 to, claims on account of construction delays.

23         53. No later than 15 days before commencing any on-Site  
24 work related to the WHOU Remedial Work, PACCAR shall secure, and

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 41

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 shall maintain until the first anniversary of EPA's Certification  
2 of Completion of the WHOU Remedial Work pursuant to  
3 Paragraph 46.b. of Section XIV (CERTIFICATION OF COMPLETION)  
4 comprehensive general liability insurance with limits of \$1  
5 million dollars, combined single limit, and automobile liability  
6 insurance with limits of \$1 million dollars, combined single  
7 limit, naming the United States as an additional insured. In  
8 addition, for the duration of this Consent Decree, PACCAR shall  
9 satisfy, or shall ensure that its contractors or subcontractors  
10 satisfy, all applicable laws and regulations regarding the  
11 provision of worker's compensation insurance for all persons  
12 performing the WHOU Remedial Work on behalf of PACCAR in  
13 furtherance of this Consent Decree. Prior to commencement of the  
14 WHOU Remedial Work, PACCAR shall provide to EPA certificates of  
15 such insurance and a copy of each insurance policy. PACCAR shall  
16 resubmit such certificates and copies of policies each year on  
17 the anniversary of the effective date of this Consent Decree. If  
18 PACCAR demonstrates by evidence satisfactory to EPA that any  
19 contractor or subcontractor maintains insurance or other  
20 financial security equivalent to that described above, or  
21 insurance covering the same risks but in a lesser amount, then,  
22 with respect to that contractor or subcontractor, PACCAR will  
23 provide only that portion of the certificates of insurance or  
24

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 42

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 other indicia of financial security to EPA described above which  
2 is not maintained by the contractor or subcontractor.

3 XVIII. FORCE MAJEURE

4 54. "Force majeure," for purposes of this Consent Decree,  
5 is defined as any event arising from causes beyond the control of  
6 PACCAR, of any entity controlled by PACCAR, or of PACCAR's  
7 contractors, that delays or prevents the performance of any  
8 obligation under this Consent Decree despite PACCAR's best  
9 efforts to fulfill the obligation. The requirement that PACCAR  
10 exercise "best efforts to fulfill the obligation" includes using  
11 best efforts to anticipate any potential force majeure event and  
12 best efforts to address the effects of any potential force  
13 majeure event (a) as it is occurring and (b) following the  
14 potential force majeure event, such that the delay is minimized  
15 to the greatest extent possible. "Force Majeure" does not  
16 include financial inability to complete the WHOU Remedial Work or  
17 a failure to attain the Performance Standards.

18 55. If any event occurs or has occurred that may delay the  
19 performance of any obligation under this Consent Decree, whether  
20 or not caused by a force majeure event, PACCAR shall notify  
21 orally EPA's Project Coordinator or, in his or her absence, EPA's  
22 Alternate Project Coordinator or, in the event both of EPA's  
23 designated representatives are unavailable, the Director of the  
24 Office of Environmental Cleanup, EPA Region 10, within 10 days of

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 43

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 when PACCAR first knew that the event might cause a delay.  
2 Within 10 days thereafter, PACCAR shall provide in writing to EPA  
3 an explanation and description of the reasons for the delay; the  
4 anticipated duration of the delay; all actions taken or to be  
5 taken to prevent or minimize the delay; a schedule for  
6 implementation of any measures to be taken to prevent or mitigate  
7 the delay or the effect of the delay; PACCAR's rationale for  
8 attributing such delay to a force majeure event if PACCAR intends  
9 to assert such a claim; and a statement as to whether, in the  
10 opinion of PACCAR, such event may cause or contribute to an  
11 endangerment to public health, welfare or the environment.  
12 PACCAR shall include with any notice all available documentation  
13 supporting its claim that the delay was attributable to a force  
14 majeure. Failure to comply with the above requirements shall  
15 preclude PACCAR from asserting any claim of force majeure for  
16 that event for the period of time of such failure to comply, and  
17 for any additional delay caused by such failure. PACCAR shall be  
18 deemed to know of any circumstance of which it, any entity it  
19 controls, or any of its contractors knew or should have known.

20 56. If EPA agrees that the delay or anticipated delay is  
21 attributable to a force majeure event, the time for performance  
22 of the obligations under this Consent Decree that are affected by  
23 the force majeure event will be extended by EPA for such time as  
24 is necessary to complete those obligations. An extension of the

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 44

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616



1 time for performance of the obligations affected by the force  
2 majeure event shall not, of itself, extend the time for  
3 performance of any other obligation. If EPA does not agree that  
4 the delay or anticipated delay has been or will be caused by a  
5 force majeure event, EPA will notify PACCAR in writing of its  
6 decision. If EPA agrees that the delay is attributable to a  
7 force majeure event, EPA will notify PACCAR in writing of the  
8 length of the extension, if any, for performance of the  
9 obligations affected by the force majeure event.

10 57. If PACCAR elects to invoke the dispute resolution  
11 procedures set forth in Section XIX (DISPUTE RESOLUTION), PACCAR  
12 shall do so no later than 15 days after receipt of EPA's notice.  
13 In any such proceeding, PACCAR shall have the burden of  
14 demonstrating by a preponderance of the evidence that the delay  
15 or anticipated delay has been or will be caused by a force  
16 majeure event, that the duration of the delay or the extension  
17 sought was or will be warranted under the circumstances, that  
18 best efforts were exercised to avoid and mitigate the effects of  
19 the delay, and that PACCAR complied with the requirements of  
20 Paragraphs 55 and 56, above. If PACCAR carries this burden, the  
21 delay at issue shall be deemed not to be a violation by PACCAR of  
22 the affected obligation of this Consent Decree.

23  
24  
25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 45

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1                   XIX. DISPUTE RESOLUTION

2           58. Unless otherwise expressly provided for in this  
3 Consent Decree, the dispute resolution procedures of this Section  
4 shall be the exclusive mechanism to resolve disputes arising  
5 under or with respect to this Consent Decree. However, the  
6 procedures set forth in this Section shall not apply to actions  
7 by the United States to enforce obligations of PACCAR that have  
8 not been disputed in accordance with this Section.

9           59. Any dispute which arises under or with respect to this  
10 Consent Decree shall in the first instance be the subject of  
11 informal negotiations between the United States and PACCAR. Upon  
12 the request of either party, the informal negotiations team shall  
13 include a senior management representative of PACCAR and the  
14 Director or Deputy Director of the Office of Environmental  
15 Cleanup, EPA, Region 10. The period for informal negotiations  
16 shall not exceed 14 days from the time the dispute arises, unless  
17 it is modified by written agreement of the United States and  
18 PACCAR. The dispute shall be considered to have arisen when one  
19 party sends the other party a written Notice of Dispute.

20           60.a. In the event that the United States and PACCAR  
21 cannot resolve a dispute by informal negotiations under the  
22 preceding Paragraph, then the position advanced by EPA shall be  
23 considered binding unless, within 10 days after the conclusion of  
24 the informal negotiation period, PACCAR invokes the formal

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 46

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 dispute resolution procedures of this Section by serving on the  
2 United States a written Statement of Position on the matter in  
3 dispute, including, but not limited to, any factual data,  
4 analysis or opinion supporting that position and any supporting  
5 documentation relied upon by PACCAR. The Statement of Position  
6 shall specify PACCAR's position as to whether formal dispute  
7 resolution should proceed under either Paragraph 61 or 62.

8         b. Within fourteen (14) days after receipt of  
9 PACCAR's Statement of Position, EPA will serve on PACCAR its  
10 Statement of Position, including, but not limited to, any factual  
11 data, analysis, or opinion supporting that position and all  
12 supporting documentation relied upon by EPA. EPA's Statement of  
13 Position shall include a statement as to whether formal dispute  
14 resolution should proceed under either Paragraph 61 or 62.  
15 Within 10 days after receipt of EPA's Statement of Position,  
16 PACCAR may submit a Reply.

17         c. If there is disagreement between EPA and PACCAR as  
18 to whether dispute resolution should proceed under either  
19 Paragraph 61 or 62, the United States and PACCAR shall follow the  
20 procedures set forth in the Paragraph determined by EPA to be  
21 applicable. However, if PACCAR ultimately appeals to the Court  
22 to resolve the dispute, the Court shall determine which paragraph  
23 is applicable in accordance with the standards of applicability  
24 set forth in Paragraphs 61 and 62.

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 47

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

28

1        61. Formal dispute resolution for disputes pertaining to  
2 the selection or adequacy of any response action and all other  
3 disputes that are accorded review on the administrative record  
4 under applicable principles of administrative law shall be  
5 conducted pursuant to the procedures set forth in this Paragraph.  
6 For purposes of this Paragraph, the adequacy of any response  
7 action includes, without limitation: the adequacy or  
8 appropriateness of plans, procedures to implement plans, or any  
9 other items requiring approval by EPA under this Consent Decree;  
10 and the adequacy of the performance of response actions taken  
11 pursuant to this Consent Decree. Nothing in this Consent Decree  
12 shall be construed to allow any dispute by PACCAR regarding the  
13 validity of the provisions of the WHOU ROD.

14        a. An administrative record of the dispute shall be  
15 maintained by EPA and shall contain all statements of position,  
16 including supporting documentation, submitted pursuant to this  
17 Section. Where appropriate, EPA may allow submission of  
18 supplemental statements of position .

19        b. The Director of the Office of Environmental  
20 Cleanup, EPA, Region 10, will issue a final administrative  
21 decision resolving the dispute based on the administrative record  
22 described in Subparagraph 61.a. This decision shall be binding  
23 upon PACCAR, subject only to the right to seek judicial review  
24 pursuant to Subparagraphs 61.c. and d.

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 48

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 c. Any administrative decision made by EPA pursuant  
2 to Subparagraph 61.b. shall be reviewable by this Court, provided  
3 that a motion for judicial review of the decision is filed by  
4 PACCAR with the Court and served on the United States within 10  
5 days of receipt of EPA's decision. The motion shall include a  
6 description of the matter in dispute, the efforts made to resolve  
7 the dispute, the relief requested, and the schedule, if any,  
8 within which the dispute must be resolved to ensure orderly  
9 implementation of this Consent Decree. The United States may  
10 file a response to PACCAR's motion.

11 d. In proceedings on any dispute governed by this  
12 Paragraph, PACCAR shall have the burden of demonstrating that the  
13 decision of the EPA Office of Environmental Cleanup Director is  
14 arbitrary and capricious or otherwise not in accordance with law  
15 or this Consent Decree. Judicial review of EPA's decision shall  
16 be on the administrative record compiled pursuant to  
17 Subparagraph 61.a.

18 62. Formal dispute resolution for disputes that neither  
19 pertain to the selection or adequacy of any response action nor  
20 are otherwise accorded review on the administrative record under  
21 applicable principles of administrative law, shall be governed by  
22 this Paragraph.

23 a. Following receipt of PACCAR's Statement of  
24 Position submitted pursuant to Paragraph 60, the Director of the

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 49

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 Office of Environmental Cleanup, EPA, Region 10, will issue a  
2 final decision resolving the dispute. The Director's decision  
3 shall be binding on PACCAR unless, within 10 days of receipt of  
4 the decision, PACCAR files with the Court and serves on the  
5 United States a motion for judicial review of the decision  
6 setting forth the matter in dispute, the efforts made to resolve  
7 the dispute, the relief requested, and the schedule, if any,  
8 within which the dispute must be resolved to ensure orderly  
9 implementation of the Consent Decree. The United States may file  
10 a response to PACCAR's motion.

11 b. Judicial review of any dispute governed by this  
12 Paragraph shall be governed by applicable principles of law.

13 63. The invocation of formal dispute resolution procedures  
14 under this Section shall not extend, postpone or affect in any  
15 way any obligation of PACCAR under this Consent Decree, not  
16 directly in dispute, unless EPA or the Court agrees otherwise.  
17 Stipulated penalties with respect to the disputed matter shall  
18 continue to accrue but payment shall be stayed pending resolution  
19 of the dispute. Notwithstanding the stay of payment, stipulated  
20 penalties shall accrue from the first day of noncompliance with  
21 any applicable provision of this Consent Decree. In the event  
22 that PACCAR does not prevail on the disputed issue, stipulated  
23 penalties shall be assessed and paid as provided in Section XX  
24 (STIPULATED PENALTIES).

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 50

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1                                   XX.   STIPULATED PENALTIES

2           64.   PACCAR shall be liable for stipulated penalties in the  
3 amounts set forth in Paragraphs 65 and 66 to the United States  
4 for failure to achieve compliance with the requirements of this  
5 Consent Decree as specified below, unless excused under Section  
6 XVIII (Force Majeure). "Compliance" by PACCAR shall include: (a)  
7 completion of the activities under this Consent Decree or any  
8 work plan or other plan approved under this Consent Decree, as  
9 identified below, in accordance with all applicable requirements  
10 of law, this Consent Decree, the WHOU Remedial Design, and any  
11 plans or other documents approved by EPA pursuant to this Consent  
12 Decree; and (b) completion of activities within the specified  
13 time schedules established by and approved under this Consent  
14 Decree.

15           65.a. The following stipulated penalties shall accrue per  
16 violation per day for failure: (i) to timely submit the WHOU  
17 Remedial Work Plan; or (ii) to commence the field work portion of  
18 the 1997 WHOU Remedial Work by June 15, 1997 -- unless PACCAR is  
19 excused from performing the 1997 WHOU Remedial Work in 1997  
20 pursuant to Subparagraph 10.c. hereof -- in which case PACCAR  
21 shall commence the field work portion of the 1997 WHOU Remedial  
22 Work by no later than June 15, 1998:

23                   Days 1-7.....\$   200  
24                   Days 8-14.....\$   500

25   CONSENT DECREE BETWEEN THE  
26   UNITED STATES AND PACCAR - 51

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

Days 15-30.....\$1,000  
Days 31 and beyond .....\$1,500

The entire amount of any Stipulated Penalty accrued under this Paragraph 65 shall be excused in the event that the 1997 WHOU Remedial Work is completed by December 31, 1997 -- unless PACCAR is excused from performing the 1997 WHOU Remedial Work in 1997 pursuant to Paragraph 10.c. hereof -- in which case the said Stipulated Penalty shall be excused if PACCAR completes the 1997 WHOU Remedial Work by December 31, 1998.

66. The following stipulated penalties shall accrue per violation per day for failure to complete the field work portion of the 1997 WHOU Remedial Work by December 31 of the year in which the 1997 WHOU Remedial Work is commenced or failure to complete all WHOU Remedial Work by no later than December 31, 1998:

Days 1-7 .....\$ 500  
Days 8-14 .....\$1,000  
Days 15-30 .....\$2,500  
Days 31 and beyond.....\$5,000

67. In the event that EPA assumes performance of a portion or all of the WHOU Remedial Work pursuant to Paragraph 81 of Section XXI (COVENANT NOT TO SUE BY THE UNITED STATES), PACCAR shall be liable for a stipulated penalty in the amount of \$25,000.

68. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs,

CONSENT DECREE BETWEEN THE  
UNITED STATES AND PACCAR - 52

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616



1 and shall continue to accrue through the final day of the  
2 correction of the noncompliance or completion of the activity.  
3 However, stipulated penalties shall not accrue: (a) with respect  
4 to a deficient submission under Section XI (EPA APPROVAL OF PLANS  
5 AND OTHER SUBMISSIONS), during the period, if any, beginning on  
6 the 31st day after EPA's receipt of such submission until the  
7 date that EPA notifies PACCAR of any deficiency; (2) with respect  
8 to a decision by the Director of the Office of Environmental  
9 Cleanup, EPA, Region 10, under Subparagraph 61.b. or 62.a. of  
10 Section XIX (DISPUTE RESOLUTION), during the period, if any,  
11 beginning on the 21st day after the date that PACCAR's reply to  
12 EPA's Statement of Position is received until the date that the  
13 Director issues a final decision regarding such dispute; or (c)  
14 with respect to judicial review by this Court of any dispute  
15 under Section XIX (DISPUTE RESOLUTION), during the period, if  
16 any, beginning on the 31st day after the Court's receipt of the  
17 final submission regarding the dispute until the date that the  
18 Court issues a final decision regarding such dispute. Nothing  
19 herein shall prevent the simultaneous accrual of separate  
20 penalties for separate violations of this Consent Decree.

21 69. Following EPA's determination that PACCAR has failed to  
22 comply with a requirement of this Consent Decree, EPA may give  
23 PACCAR written notification of the same and describe the  
24 noncompliance. EPA may send PACCAR a written demand for the

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 53

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 payment of the penalties. However, stipulated penalties shall  
2 accrue as provided in the preceding Paragraph regardless of  
3 whether EPA has notified PACCAR of a violation.

4 70. All penalties accruing under this Section shall be due  
5 and payable to the United States within 30 days of PACCAR's  
6 receipt from EPA of a demand for payment of the penalties, unless  
7 PACCAR invokes the dispute resolution procedures under  
8 Section XIX (DISPUTE RESOLUTION). All payments to the United  
9 States under this Section shall be paid by certified or cashier's  
10 check(s) made payable to "EPA Hazardous Substances Superfund,"  
11 shall be mailed to Mellon Bank, U.S. EPA Region 10, Attn:  
12 Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania  
13 15251, shall indicate that the payment is for stipulated  
14 penalties, and shall reference the EPA Region and Site/Spill ID  
15 #10-62, the DOJ Case Number 90-7-1-525b, and the name and address  
16 of PACCAR. Copies of check(s) paid pursuant to this Section, and  
17 any accompanying transmittal letter(s), shall be sent to the  
18 United States as provided in Section XXVI (NOTICES AND  
19 SUBMISSIONS).

20 71. The payment of penalties shall not alter in any way  
21 PACCAR's obligation to complete the performance of the WHOU  
22 Remedial Work as required under this Consent Decree.

23  
24  
25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 54

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

28

1        72. Penalties shall continue to accrue as provided in  
2 Paragraph 68 during any dispute resolution period, but need not  
3 be paid until the following:

4            a. If the dispute is resolved by agreement or by a  
5 decision of EPA that is not appealed to this Court, accrued  
6 penalties determined to be owing shall be paid to EPA within 15  
7 days of the agreement or the receipt of EPA's decision or order;

8            b. If the dispute is appealed to this Court and the  
9 United States prevails in whole or in part, PACCAR shall pay all  
10 accrued penalties determined by the Court to be owed to EPA  
11 within 60 days of receipt of the Court's decision or order,  
12 except as provided in Subparagraph 72.c. below;

13           c. If the District Court's decision is appealed by  
14 either Party, PACCAR shall pay all accrued penalties determined  
15 by the District Court to be owing to the United States into an  
16 interest-bearing escrow account within 60 days of receipt of the  
17 Court's decision or order. Penalties shall be paid into this  
18 account as they continue to accrue, at least every 60 days.  
19 Within 15 days of receipt of the final appellate court decision,  
20 the escrow agent shall pay the balance of the account to the  
21 party who prevails, either EPA or PACCAR.

22        73. If PACCAR fails to pay stipulated penalties when due,  
23 the United States may institute proceedings to collect the  
24 penalties, as well as interest. PACCAR shall pay Interest on the

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 55

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 unpaid balance, which shall begin to accrue on the date of demand  
2 made pursuant to Paragraph 70.

3 74. Nothing in this Consent Decree shall be construed as  
4 prohibiting, altering, or in any way limiting the ability of the  
5 United States to seek any other remedies or sanctions available  
6 by virtue of PACCAR's violation of this Consent Decree or of the  
7 statutes and regulations upon which it is based, including, but  
8 not limited to, penalties pursuant to Section 122(1) of CERCLA,  
9 42 U.S.C. § 9622(1). Provided, however, that the United States  
10 shall not seek civil penalties pursuant to Section 122(1) of  
11 CERCLA, 42 U.S.C. § 9622(1), for any violation for which a  
12 stipulated penalty is provided herein, except in the case of a  
13 willful violation of this Consent Decree.

14 75. Notwithstanding any other provision of this Section,  
15 the United States may, in its unreviewable discretion, waive any  
16 portion of stipulated penalties that have accrued pursuant to  
17 this Consent Decree.

18 XXI. COVENANT NOT TO SUE BY THE UNITED STATES

19 76. In consideration of the actions that will be performed  
20 and the payments that will be made by PACCAR under the terms of  
21 the Consent Decree, and except as specifically provided in  
22 Paragraphs 20, 77, 78, and 80 of this Consent Decree, the United  
23 States covenants not to sue or to take administrative action  
24 against PACCAR pursuant to Sections 106 and 107(a) of CERCLA, 42

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 56

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 U.S.C. §§9606 and 9607(a), relating to the Site, including the  
2 disposal at the Site of sediments in the Confined Disposal  
3 Facility. This covenant not to sue shall take effect upon  
4 Certification of Completion of WHOU Remedial Work issued by EPA  
5 pursuant to Paragraph 46.b of Section XIV (CERTIFICATION OF  
6 COMPLETION). This covenant not to sue is conditioned upon the  
7 satisfactory performance by PACCAR of all obligations required of  
8 PACCAR under this Consent Decree. This covenant not to sue  
9 extends only to PACCAR and does not extend to any other person.

10 77. United States' Pre-certification Reservations.

11 a. Notwithstanding any other provision of this  
12 Consent Decree, the United States reserves, and this Consent  
13 Decree is without prejudice to, the right to institute new  
14 proceedings or issue an administrative order seeking to compel  
15 PACCAR to (i) perform further response actions relating to the  
16 WHOU that are beyond the scope of the WHOU Remedial Work and  
17 Additional Response Actions, or (ii) reimburse the United States  
18 for further costs of response related to such further response  
19 actions if, prior to Certification of Completion of the WHOU  
20 Remedial Work:

21 (aa) conditions at the WHOU, previously unknown to  
22 EPA, are discovered, or

23 (bb) information, previously unknown to EPA, is  
24 received, in whole or in part,

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 57

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 and these previously unknown conditions or information together  
2 with any other relevant information indicates that the Remedial  
3 Action for the WHOU is not protective of human health or the  
4 environment.

5           b. If the United States determines pursuant to  
6 Paragraph 77.a. above, that further response actions are  
7 necessary, EPA shall select the further response actions in  
8 accordance with the requirements of CERCLA and the NCP. EPA  
9 shall notify PACCAR in writing of the further response actions  
10 determined to be necessary by EPA and the schedule for performing  
11 such further response actions. PACCAR shall notify EPA in  
12 writing whether PACCAR consents to perform the further response  
13 actions, including any request for modifications to the nature,  
14 scope or schedule for performing such further response actions.  
15 If PACCAR consents to perform the further response actions, such  
16 actions shall be undertaken by PACCAR pursuant to a modification  
17 to this Consent Decree.

18           c. Notwithstanding any other provision of this  
19 Consent Decree, in the event that PACCAR performs further  
20 response actions pursuant to this paragraph 77, PACCAR shall have  
21 the right to institute proceedings in this action or in a new  
22 action to seek recovery from the State, the United States, and  
23 from any other potentially liable party of all costs incurred by  
24 PACCAR to perform the further response actions.

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 58

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

28

1        78. United States' Post-certification reservations.

2            a.    Notwithstanding any other provision of this  
3 Consent Decree, the United States reserves, and this Consent  
4 Decree is without prejudice to, the right to institute  
5 proceedings in a new action or to issue an administrative order  
6 seeking to compel PACCAR to (i) perform further response actions  
7 relating to the WHOU that are beyond the scope of the WHOU  
8 Remedial Work and Additional Response Actions or (ii) reimburse  
9 the United States for further costs of response related to such  
10 further response actions if, after Certification of Completion of  
11 the WHOU Remedial Work:

12            (aa) conditions at the WHOU, previously unknown to EPA,  
13                are discovered, or

14            (bb) information, previously unknown to EPA, is  
15                received, in whole or in part,

16 and these previously unknown conditions or information together  
17 with any other relevant information indicates that the Remedial  
18 Action for the WHOU is not protective of human health or the  
19 environment.

20            b.    If the United States determines pursuant to  
21 Paragraph 78.a. above, that further response actions are  
22 necessary, EPA shall select the further response actions in  
23 accordance with the requirements of CERCLA and the NCP. EPA  
24 shall notify PACCAR in writing of the further response actions

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 59

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 determined to be necessary by EPA and the schedule for performing  
2 such further response actions. PACCAR shall notify EPA in  
3 writing whether it consents to perform further response actions,  
4 including any request for modifications to the nature, scope or  
5 schedule for performing such further response actions. If PACCAR  
6 consents to perform further response actions, such actions shall  
7 be undertaken by PACCAR pursuant to a modification to this  
8 Consent Decree.

9 c. Notwithstanding any other provision of this  
10 Consent Decree, in the event that PACCAR performs further  
11 response actions pursuant to this Paragraph 78, PACCAR shall have  
12 the right to institute proceedings in this action or in a new  
13 action to seek recovery from the State, the United States, and  
14 from any other potentially liable party of all costs incurred by  
15 PACCAR to perform further response actions.

16 79. For purposes of Paragraph 77, the information and the  
17 conditions known to EPA for the WHOU shall include only that  
18 information and those conditions known to EPA as of the date of  
19 issuance of the West Harbor Remedial Design, as set forth in the  
20 administrative record. For purposes of Paragraph 78, the  
21 information and the conditions known to EPA for the WHOU shall  
22 include only that information and those conditions known to EPA  
23 as of the date of completion of the WHOU Remedial Work.

24  
25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 60

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616



1        80. General reservations of rights. The covenant not to  
2 sue set forth above does not pertain to any matters other than  
3 those expressly specified in Paragraph 76. The United States  
4 reserves, and this Consent Decree is without prejudice to, all  
5 rights against PACCAR with respect to all other matters,  
6 including but not limited to, the following:

7            a. claims based on a failure by PACCAR to meet a  
8 requirement of this Consent Decree;

9            b. liability arising from the past, present, or  
10 future disposal, release, or threat of release of Waste Materials  
11 outside of the Site;

12           c. liability for future disposal of Waste Material at  
13 the Site, other than as provided in the WHOOU ROD, the EHOOU ROD,  
14 the WHOOU Remedial Design, the WHOOU Remedial Work, Additional  
15 Response Actions, further response actions, or otherwise ordered  
16 by EPA;

17           d. liability for damages for injury to, destruction  
18 of, or loss of natural resources, and for the costs of any  
19 natural resource damage assessments;

20           e. criminal liability;

21           f. liability for violations of federal or state law  
22 which occur during or after implementation of the WHOOU Remedial  
23 Work; and/or  
24

25        CONSENT DECREE BETWEEN THE  
26        UNITED STATES AND PACCAR - 61

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 g. liability for response actions resulting from a  
2 release of dioxins/furans or PCBs in the WHOU.

3 81. WHOU Remedial Work Takeover. In the event EPA  
4 determines that PACCAR has ceased implementation of any portion  
5 of the WHOU Remedial Work, is seriously or repeatedly deficient  
6 or late in its performance of the WHOU Remedial Work or is  
7 implementing the WHOU Remedial Work in a manner which may cause  
8 an endangerment to human health or the environment, EPA may  
9 assume the performance of all or any portions of the WHOU  
10 Remedial Work as EPA determines to be necessary. PACCAR may  
11 invoke the dispute resolution procedures set forth in Paragraph  
12 61 of Section XIX (DISPUTE RESOLUTION) to dispute EPA's  
13 determination that takeover of the WHOU Remedial Work is  
14 warranted under this Paragraph. PACCAR shall pay costs incurred  
15 by the United States in performing the WHOU Remedial Work  
16 pursuant to this Paragraph and in accordance with Subparagraph  
17 50.a. of Section XVI (PAYMENTS, INCLUDING THOSE TO PACCAR, THE  
18 UNITED STATES, AND TO AND FROM THE SITE-SPECIFIC SUPERFUND  
19 ACCOUNT).

20 82. Notwithstanding any other provision of this Consent  
21 Decree, the United States retains all authority and reserves all  
22 rights to take any and all response actions authorized by law.

23  
24  
25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 62

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

XXII. COVENANTS BY PACCAR

83. Covenant Not to Sue. Subject to the reservations in Paragraph 84, PACCAR hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the claims of PACCAR in these consolidated actions or in this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Section 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.

§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims against the United States as a defendant in Cause No. C94-5326, including any department, agency or instrumentality of the United States, under Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, related to the Site; or

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

85. PACCAR reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal

CONSENT DECREE BETWEEN THE  
UNITED STATES AND PACCAR - 63

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 injury or death caused by the negligent or wrongful act or  
2 omission of any employee of the United States while acting within  
3 the scope of his or her office or employment under circumstances  
4 where the United States, if a private person, would be liable to  
5 the claimant in accordance with the law of the place where the  
6 act or omission occurred. However, any such claim shall not  
7 include a claim for any damages caused, in whole or in part, by  
8 the act or omission of any person, including any contractor, who  
9 is not a federal employee as that term is defined in 28 U.S.C.  
10 § 2671; nor shall any such claim include a claim based on EPA's  
11 selection of response actions, or the oversight or approval of  
12 PACCAR's plans or activities. The foregoing applies only to  
13 claims which are brought pursuant to any statute other than  
14 CERCLA and for which the waiver of sovereign immunity is found in  
15 a statute other than CERCLA.

16 85. Nothing in this Consent Decree shall be deemed to  
17 constitute preauthorization of a claim within the meaning of  
18 Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.  
19 § 300.700(d).

20 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

21 86. Nothing in this Consent Decree shall be construed to  
22 create any rights in, or grant any cause of action to, any person  
23 not a party to this Consent Decree. The preceding sentence shall  
24 not be construed to waive or nullify any rights that any person

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 64

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 not a signatory to this decree may have under applicable law.  
2 The United States and PACCAR each expressly reserve any and all  
3 rights (including, but not limited to, any right to  
4 contribution), defenses, claims, demands, and causes of action  
5 which each party may have with respect to any matter,  
6 transaction, or occurrence relating in any way to the Site  
7 against any person not a party hereto.

8 87. The United States and PACCAR agree, and by entering  
9 this Consent Decree this Court finds, that PACCAR is entitled, as  
10 of the effective date of this Consent Decree, to protection from  
11 contribution actions or claims as provided by Section 113(f)(2)  
12 of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this  
13 Consent Decree, including all matters related to the  
14 Wyckoff/Eagle Harbor Superfund Site, except those matters  
15 specifically excluded by Paragraph 80.b-g. The United States and  
16 PACCAR further agree, and by entering this Consent Decree this  
17 Court further finds, that the United States as defendant in Cause  
18 No. C94-5326, including all potentially responsible federal  
19 agencies, is entitled, as of the effective date of this Consent  
20 Decree, to protection from contribution actions or claims as  
21 provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2)  
22 for matters addressed in this Consent Decree, including all  
23 matters related to the Wyckoff/Eagle Harbor Superfund Site,  
24 except those matters specifically excluded by Paragraph 80.b-g.

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 65

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 88. PACCAR agrees that with respect to any suit or claim  
2 for contribution brought by PACCAR for matters related to this  
3 Consent Decree, PACCAR will notify the United States in writing  
4 no later than 60 days prior to the initiation of such suit or  
5 claim.

6 89. PACCAR also agrees that with respect to any suit or  
7 claim for contribution brought against PACCAR for matters related  
8 to this Consent Decree, PACCAR will notify in writing the United  
9 States within 10 days of service of the complaint. In addition,  
10 PACCAR shall notify the United States within 10 days of service  
11 or receipt of any Motion for Summary Judgment and within 10 days  
12 of receipt of any order from a court setting a case for trial.

13 90. In any subsequent administrative or judicial proceeding  
14 initiated by the United States for injunctive relief, recovery of  
15 response costs, or other appropriate relief relating to the Site,  
16 PACCAR shall not assert, and may not maintain, any defense or  
17 claim based upon the principles of waiver, res judicata,  
18 collateral estoppel, issue preclusion, claim-splitting, or other  
19 defenses based upon any contention that the claims raised by the  
20 United States in the subsequent proceeding were or should have  
21 been brought in the instant case; provided, however, that nothing  
22 in this Paragraph affects the enforceability of the covenant not  
23 to sue set forth in Section XXI (COVENANT NOT TO SUE BY THE  
24 UNITED STATES).

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 66

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1                                   XXIV. ACCESS TO INFORMATION

2           91. PACCAR shall provide to EPA, upon request, copies of  
3 all documents and information within its possession or control or  
4 that of its contractors or agents relating to activities at the  
5 Site or to the implementation of this Consent Decree, including,  
6 but not limited to, sampling, analysis, chain of custody records,  
7 manifests, trucking logs, receipts, reports, sample traffic  
8 routing, correspondence, or other documents or information  
9 related to the WHOU Remedial Work. PACCAR shall also make  
10 available to EPA, for purposes of investigation, information  
11 gathering, or testimony, its employees, agents, or  
12 representatives with knowledge of relevant facts concerning the  
13 performance of the Remedial Action for the WHOU.

14           92. a. PACCAR may assert business confidentiality claims  
15 covering part or all of the documents or information submitted to  
16 the United States under Paragraph 91 of this Consent Decree, to  
17 the extent permitted by and in accordance with Section 104(e) (7)  
18 of CERCLA, 42 U.S.C. § 9604(e) (7), and 40 C.F.R. § 2.203(b).

19 Documents or information determined to be confidential by EPA  
20 will be afforded the protection specified in 40 C.F.R. Part 2,  
21 Subpart B. If no claim of confidentiality accompanies documents  
22 or information when they are submitted to EPA, or if EPA has  
23 notified PACCAR that the documents or information are not  
24 confidential under the standards of Section 104(e) (7) of CERCLA,

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 67

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 42 U.S.C. § 9604(e)(7), the public may be given access to such  
2 documents or information without further notice to PACCAR.

3 b. PACCAR may assert that certain documents, records  
4 and other information requested pursuant to Paragraph 91 and  
5 other provisions of this Consent Decree are privileged under the  
6 attorney-client privilege or any other privilege recognized by  
7 federal law. PACCAR asserts such a privilege in lieu of  
8 providing documents, it shall provide the United States with the  
9 following: (1) the title of the document, record, or  
10 information; (2) the date of the document, record, or  
11 information; (3) the name and title of the author of the  
12 document, record, or information; (4) the name and title of each  
13 addressee and recipient; (5) a summary description of the  
14 contents of the document, record, or information: and (6) the  
15 privilege asserted by PACCAR. However, no documents, reports or  
16 other information created or generated by PACCAR or its  
17 contractors or non-lawyer agents pursuant to the requirements of  
18 the Consent Decree shall be withheld on the grounds that they are  
19 privileged.

20 93. No claim of confidentiality shall be made with respect  
21 to any data, including, but not limited to, all sampling,  
22 analytical, monitoring, hydrogeologic, scientific, chemical, or  
23 engineering data, or any other documents or information  
24 evidencing conditions at or around the Site.

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 68

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616



1 XXV. RETENTION OF RECORDS

2 94. Until 10 years after PACCAR's receipt of EPA's  
3 notification pursuant to Subparagraph 46.b of Section XIV  
4 (CERTIFICATION OF COMPLETION), PACCAR shall preserve and retain  
5 all records and documents now in its possession or control or  
6 which come into its possession or control that relate in any  
7 manner to the performance of the WHOU Remedial Work or liability  
8 of any person for response actions conducted and to be conducted  
9 at the Site, regardless of any corporate retention policy to the  
10 contrary. Until 10 years after PACCAR's receipt of EPA's  
11 notification pursuant to Paragraph 46.b. of Section XIV  
12 (CERTIFICATION OF COMPLETION), PACCAR shall also instruct its  
13 contractors and agents to preserve all documents, records, and  
14 information of whatever kind, nature or description relating to  
15 the performance of the WHOU Remedial Work.

16 95. At the conclusion of the document retention period set  
17 forth in Paragraph 94, PACCAR shall notify the United States at  
18 least 90 days prior to the destruction of any such records or  
19 documents, and, upon request by the United States, PACCAR shall  
20 deliver any such records or documents to EPA. PACCAR may assert  
21 that certain documents, records and other information are  
22 privileged under the attorney-client privilege or any other  
23 privilege recognized by federal law. If PACCAR asserts such a  
24 privilege, it shall provide the United States with the following:

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 69

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 (a) the title of the document, record, or information; (b) the  
2 date of the document, record, or information; (c) the name and  
3 title of the author of the document, record, or information; (d)  
4 the name and title of each addressee and recipient; (e) a  
5 description of the subject of the document, record, or  
6 information; and (f) the privilege asserted by PACCAR. However,  
7 no documents, reports or other information created or generated  
8 by PACCAR or its contractors or non-lawyer agents pursuant to the  
9 requirements of the Consent Decree shall be withheld on the  
10 grounds that they are privileged.

11 96. PACCAR hereby certifies that, to the best of its  
12 knowledge and belief, after thorough inquiry, it has not altered,  
13 mutilated, discarded, destroyed or otherwise disposed of any  
14 records, documents or other information relating to the potential  
15 liability of any party regarding the Site since notification of  
16 potential liability by the United States or the filing of suit  
17 against it regarding the Site, and that PACCAR has fully complied  
18 with any and all EPA requests for information pursuant to Section  
19 104(e) of CERCLA, 42 U.S.C. 9604(e).

20 XXVI. NOTICES AND SUBMISSIONS

21 97. Whenever, under the terms of this Consent Decree,  
22 written notice is required to be given or a report or other  
23 document is required to be sent by one party to another, it shall  
24 be directed to the individuals at the addresses specified below,

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 70

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 unless those individuals or their successors give notice of a  
2 change to the other party in writing. All notices and  
3 submissions shall be considered effective upon receipt, unless  
4 otherwise provided. Written notice as specified herein shall  
5 constitute complete satisfaction of any written notice  
6 requirement of the Consent Decree with respect to the United  
7 States, EPA, and PACCAR, respectively.

8 As to the United States:

9 Chief, Environmental Enforcement Section  
10 Environment and Natural Resources Division  
11 U.S. Department of Justice  
12 P.O. Box 7611  
13 Ben Franklin Station  
14 Washington, D.C. 20044  
15 Re: DJ # 90-7-1-525b

16 As to EPA:

17 Ellen Hale, Project Coordinator W/EH-WHOU  
18 United States Environmental Protection Agency  
19 Region 10  
20 1200 Sixth Avenue  
21 Seattle, Washington 98104

22 As to the Settling Federal Agencies:

23 Chief, Environmental Defense Section  
24 Environment and Natural Resources Division  
25 U.S. Department of Justice  
26 P.O. Box 7611  
27 Ben Franklin Station  
28 Washington, D.C. 20044  
Re: DJ # 90-7-1-525b

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 71

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 As to PACCAR:

2 Mark Valentine  
3 de maximis, inc.  
4 Supervising Contractor  
5 705 Second Avenue  
6 Suite 802  
7 Seattle, Washington 98104

8 XXVII. EFFECTIVE DATE

9 98. The effective date of this Consent Decree shall be the  
10 date upon which this Consent Decree is entered by the Court,  
11 except as otherwise provided herein.

12 XXVIII. RETENTION OF JURISDICTION

13 99. This Court retains jurisdiction over both the subject  
14 matter of this Consent Decree and the parties hereto for the  
15 duration of the performance of the terms and provisions of this  
16 Consent Decree for the purpose of enabling either the United  
17 States or PACCAR to apply to the Court at any time for such  
18 further order, direction, and relief as may be necessary or  
19 appropriate for the construction or modification of this Consent  
20 Decree, or to effectuate or enforce compliance with its terms, or  
21 to resolve disputes in accordance with Section XIX (DISPUTE  
22 RESOLUTION) hereof.

23 XXIX. APPENDICES

24 100. The following appendices are attached to and  
25 incorporated into this Consent Decree:

26 "Appendix A" is the WHOU ROD.

27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 "Appendix B" is the WHOU Remedial Design.

2 XXX. COMMUNITY RELATIONS

3 101. PACCAR shall propose to EPA its participation in a  
4 community relations plan to be developed by EPA. EPA will  
5 determine the appropriate role for PACCAR under this plan.  
6 PACCAR shall also cooperate with EPA in providing information  
7 regarding Remedial Action for the WHOU to the public. As  
8 requested by EPA, PACCAR shall participate in the preparation of  
9 such information for dissemination to the public and in public  
10 meetings which may be held or sponsored by EPA to explain  
11 activities at or relating to the Site.

12 XXXI. MODIFICATION

13 102. Schedules specified in this Consent Decree for  
14 completion of the WHOU Remedial Work may be modified by agreement  
15 of EPA and PACCAR. All such modifications shall be made in  
16 writing.

17 103. Except as provided in Paragraph 12 ("Modification of  
18 the WHOU Remedial Work or Related WHOU Work Plans"), no material  
19 modifications shall be made to the WHOU Remedial Work without  
20 written notification to and written approval of the United  
21 States, PACCAR, and the Court. Modifications to the WHOU  
22 Remedial Work that do not materially alter that document may be  
23 made by written agreement between EPA and PACCAR.

24  
25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 73

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 104. Nothing in this Consent Decree shall be deemed to  
2 alter the Court's power to enforce, supervise or approve  
3 modifications to this Consent Decree.

4 XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

5 105. This Consent Decree shall be lodged with the Court  
6 for a period of not less than thirty (30) days for public notice  
7 and comment in accordance with Section 122(d)(2) of CERCLA, 42  
8 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States  
9 reserves the right to withdraw or withhold its consent if the  
10 comments regarding the Consent Decree disclose facts or  
11 considerations which indicate that the Consent Decree is  
12 inappropriate, improper, or inadequate. PACCAR consents to the  
13 entry of this Consent Decree without further notice.

14 106. If for any reason the Court should decline to approve  
15 this Consent Decree in the form presented, this agreement is  
16 voidable at the sole discretion of either the United States or  
17 PACCAR and the terms of the agreement may not be used as evidence  
18 in any litigation between these two parties.

19 XXXIII. SIGNATORIES/SERVICE

20 107. The undersigned representative of PACCAR and the  
21 Assistant Attorney General for Environment and Natural Resources  
22 of the Department of Justice certifies that he/she is fully  
23 authorized to enter into the terms and conditions of this Consent  
24

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 74

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1 Decree and to execute and legally bind such party to this  
2 document.

3 108. PACCAR hereby agrees not to oppose entry of this  
4 Consent Decree by this Court or to challenge any provision of  
5 this Consent Decree unless the United States has notified PACCAR  
6 in writing that the United States no longer supports entry of the  
7 Consent Decree.

8 109. PACCAR shall identify, on the attached signature  
9 page, the name, address and telephone number of an agent who is  
10 authorized to accept service of process by mail on behalf of  
11 PACCAR with respect to all matters arising under or relating to  
12 this Consent Decree. PACCAR hereby agrees to accept service in  
13 that manner and to waive the formal service requirements set  
14 forth in Rule 4 of the Federal Rules of Civil Procedure and any  
15 applicable local rules of this Court, including, but not limited  
16 to, service of a summons.

17 SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1997.

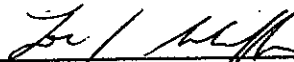
18  
19  
20 United States District Judge


21  
22  
23  
24  
25 CONSENT DECREE BETWEEN THE U.S. Department of Justice  
26 UNITED STATES AND PACCAR - 75 c/o NOAA/DOJ - DARC  
27 7600 Sand Point Way  
28 Seattle, WA 98115-7600  
(206) 526-6616

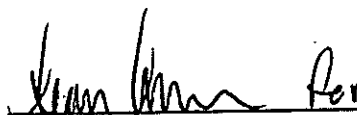
1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. State of Washington and PACCAR,  
3 relating to the Wyckoff/Eagle Harbor Superfund Site.

4 FOR THE UNITED STATES OF AMERICA

5 Date: 3/20/97

6   
7 LOIS J. SCHIFFER  
8 Assistant Attorney General  
9 Environment and Natural Resources  
10 Division  
11 U.S. Department of Justice  
12 Washington, D.C. 20530

13   
14 JAMES L. NICOLL  
15 SEAN CARMAN  
16 Environmental Enforcement Section  
17 Environment and Natural Resources  
18 Division  
19 U.S. Department of Justice  
20 c/o NOAA/DOJ - DARC  
21 7600 Sand Point Way, N.E.  
22 Seattle, Washington 98115-7600  
23 (206) 526-6616

24  for  
25 LEWIS M. BARR  
26 STEVEN E. RUSAK  
27 Environmental Defense Section  
28 Environment and Natural Resources  
Division  
United States Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530  
(202) 514-4206

29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

U.S. Department of Justice  
c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616



1  
2  
3 

4 CHUCK CLARKE  
5 Regional Administrator, Region 10  
6 United States Environmental  
7 Protection Agency  
8 1200 Sixth Avenue  
9 Seattle, Washington 98104

10 

11 RICHARD MEDNICK  
12 Associate Regional Counsel  
13 United States Environmental  
14 Protection Agency  
15 Region 10  
16 1200 Sixth Avenue  
17 Seattle, Washington 98104  
18 (206) 553-8203  
19 WSBA # 17697

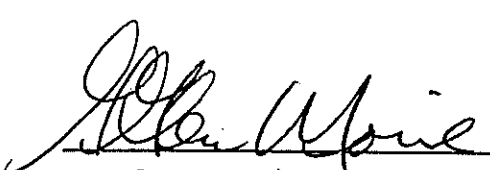
20  
21  
22  
23  
24  
25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 77

27 U.S. Department of Justice  
28 c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616

1  
2  
3 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
4 matter of United States v. State of Washington and PACCAR,  
5 relating to the Wyckoff/Eagle Harbor Superfund Site.

6 FOR PACCAR INC

7  
8 Date: 3-12-97

  
9 G: Glen Morie  
10 Vice President and General Counsel  
11 PACCAR Inc  
12 PO Box 1518  
13 Bellevue, WA 98009

14 Agent Authorized to Accept Service on Behalf of Above-signed  
15 Party:

16 Name: \_\_\_\_\_  
17 Title: Counsel of Record  
18 Address: \_\_\_\_\_  
19 Tel. Number: \_\_\_\_\_  
20  
21  
22  
23  
24

25 CONSENT DECREE BETWEEN THE  
26 UNITED STATES AND PACCAR - 78

27 U.S. Department of Justice  
28 c/o NOAA/DOJ - DARC  
7600 Sand Point Way  
Seattle, WA 98115-7600  
(206) 526-6616